Nos. 10112, ~~10114~~, 10115, 10123

United States
Circuit Court of Appeals
For the Ninth Circuit.

No. 10112.
HEARST PUBLICATIONS, INCORPORATED,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10114.
STOCKHOLDERS PUBLISHING COMPANY, INC.,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10115.
HEARST PUBLICATIONS, INCORPORATED,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10123.
THE TIMES-MIRROR COMPANY, a corporation,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record
In Four Volumes
VOLUME I
Pages 1 to 483

Upon Petitions for Review and Enforcement of Orders of the National Labor Relations Board

ROTARY COLORPRINT, 590 FOLSOM ST., SAN FRANCISCO

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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BOARD'S EXHIBIT No. 1-B

United States of America

Before the National Labor Relations Board

Twenty-first Region

Case No. R-927

240 inv.

In the matter of LOS ANGELES EVENING NEWS and LOS ANGELES NEWSBOYS L. I. U. No. 75, C. I. O.

Petitioner.

PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Name of Employer—Los Angeles Evening News.

Address—For. 12th and Los Angeles Street, Los Angeles, California.

General nature of business—Publishers.

Approximate total number of employees—665.

Description of the bargaining unit which petitioner claims is appropriate—Newsboys who sell papers at main spots, full time corners, and check men, within city of Los Angeles.

Approximate number of employees in such unit—240. Classification of employees in such unit, giving approximate number of employees in each department or class—(as above).

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining—190.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—none.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: Company refuses to bargain with representative until election is held to determine whether union represents majority.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS
LOCAL IND. UNION, No. 75,
CIO
By: PAT COMORRE
Room 304, 212 W. 3rd Street,
Los Angeles, Cal.
Mu. 5747

Subscribed and sworn to before me this 18th day of April, 1939 at Los Angeles, California.

GEORGE D. McKAY,
Field Examiner
National Labor Relations Board
U. S. Post Office & Court House Bldg.
Los Angeles, California

BOARD'S EXHIBIT NO. 1-C

United States of America

Before the National Labor Relations Board
Twenty-first Region

Case No. XXIR928

200 inv.

In the matter of LOS ANGELES EVENING HERALD & EXPRESS and LOS ANGELES NEWSBOYS LOCAL IND. UNION No. 75, CIO.

Petitioner.

PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Name of employer—Los Angeles Evening Herald & Express.

Address—1243 Trenton Street, Los Angeles, Calif.

General nature of business—Publishers.

Approximate total number of employees—1040. Description of the bargaining unit which petitioner claims is appropriate—Newsboys who sell papers at main spots, full time corners, and check men within the city limits of Los Angeles, California.

Approximate number of employees in such unit—200. Classification of employees in such unit, giving approximate number of employees in each department or class—(same as above).

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining—190.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—None.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: Company refuses to bargain with representative until election is held to determine whether union represents majority.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS LOCAL IND. UNION No. 75, CIO

By: PAT COMORRE

Pat Comorre

Room 304, 212 West 3rd Street, Los Angeles, Cal.

Mu. 5747

Subscribed and sworn to before me this 18th day of April, 1939 at Los Angeles, California.

GEORGE D. McKAY,

Field Examiner

National Labor Relations Board

U. S. Post Office & Court House Bldg.

Los Angeles, California

BOARD'S EXHIBIT No. 1-D

United States of America

Before the National Labor Relations Board

Twenty-first Region

Case No. XXIR927

240 inv.

In the matter of STOCKHOLDERS PUBLISHING COMPANY, INC. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, CIO,

Petitioner.

AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Name of employer—Stockholders Publishing Company, Inc.

Address—12th and Los Angeles Streets, Los Angeles, California.

General nature of business—Publishers.

Approximate total number of employees—665. Description of the bargaining unit which petitioner claims is appropriate—Newsboys who sell papers at main spots, full time corners, and check men, within city of Los Angeles.

Approximate number of employees in such unit—240. Classification of employees in such unit, giving approximate number of employees in each department or class—(as above).

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining—190.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—None.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: Company refuses to bargain with representative until election is held to determine whether union represents majority.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS
LOCAL INDUSTRIAL UNION No. 75, CIO
By: PAT COMORRE
G. ALLEY
Room 304, 212 W. 3rd Street
Los Angeles, Calif.
MU. 5747

Subscribed and sworn to before me this 12th day of June, 1939 at Los Angeles, California.

GEORGE D. McKAY,
Field Examiner
National Labor Relations Board
U. S. Post Office & Court House Bldg.
Los Angeles, California

BOARD'S EXHIBIT No. 1-E

NLRB-90

United States of America
Before the National Labor Relations Board

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 31st day of July, 1939.

Present:

J. WARREN MADDEN, Chairman
EDWIN S. SMITH

Case No. XXI-R-927

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC., and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75; CIO.

ORDER DIRECTING INVESTIGATION AND HEARING

A petition having been filed in this matter for an investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act, and the Board having considered same and being advised in the premises and it appearing to the Board that a question affecting commerce concerning the representation of employees has arisen,

It Is Hereby Ordered that the Regional Director for the Twenty-first Region conduct an investigation and provide for an appropriate hearing upon

due notice, pursuant to Section 9(c) of the National Labor Relations Act and Article III, Section 3 of the Rules and Regulations—Series 2 of the National Labor Relations Board, and report to the Board regarding such investigation and hearing.

By direction of the Board.

[Seal] NATHAN WITT,
Secretary.

BOARD'S EXHIBIT No. 1-F

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXIR928

200 inv.

In the matter of HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL IND. UNION No. 75, CIO, Petitioner.

AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Name and Address of employer—Hearst Publications Incorporated, 410 Hearst Building, San Francisco, Calif. (Los Angeles Evening Herald &

Express Dept., 1243 Trenton St., Los Angeles, Calif.)

General nature of business—Publishers.

Approximate total number of employees—1040. Description of the bargaining unit which petitioner claims is appropriate—Newsboys who sell papers at main spots and check men within the City Limits of Los Angeles, California.

Approximate number of employees in such unit—230.

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining—210.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—None.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: Company refuses to bargain with representative until election is held to determine whether union represents majority.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS LOCAL IND. UNION No. 75, CIO
By: GENE ALLEY
Fin. Sec'y.
Room 304, 212 West 3rd St., Los Angeles, Calif., MU 5747

Subscribed and sworn to before me this 5th day of February, 1940 at Los Angeles, California.

JAMES C. CLARK,
Field Examiner
21st Region,
National Labor Relations Board
808 U. S. Post Office & Court House Bldg.

BOARD'S EXHIBIT No. 1-G

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXIR1062

280 inv.

In the matter of TIMES MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL No. 75, C.I.O., Petitioner.

PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Name of employer—Times Mirror Co.

Address—2nd and Spring, Los Angeles, Calif.

General nature of business—Publishing L. A. Times.

Approximate total number of employees—1200.

Description of the bargaining unit which petitioner claims is appropriate—all newsboys (called Hustlers) selling the Los Angeles Times in the City limits of Los Angeles.

Approximate number of employees in such unit—280.

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining—195.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—none.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: The Times Mirror Co. has refused to bargain collectively with the Newsboys Union on the ground that newsboys are not employees within the meaning of the Act.

The undersigned further alleges that said ques-

tion concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES, NEWSBOYS
LOCAL No. 75
By: GENE ALLEY,
Gene Alley, Sec'y. Local No. 75
Room 304, 212 W. 3rd St.
Los Angeles, Cal.
MU 5747

Subscribed and sworn to before me this 18th day of March, 1940 at Los Angeles, Calif.

JAMES C. CLARK,
Field Examiner
National Labor Relations Board
U. S. Post Office & Court House Bldg.
Los Angeles, California

BOARD'S EXHIBIT NO. 1-H

United States of America
Before the National Labor Relations Board

Case No. XXI-R-927

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, Inc. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, CIO

Case No. XXI-R-928

HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL IND. UNION No. 75, CIO

Case No. XXI-R-1062

TIMES MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL No. 75, C.I.O.

ORDER DIRECTING INVESTIGATION AND HEARING AND CONSOLIDATING CASES

A petition and amended petition, pursuant to Section 9(c) of the Act, having been filed in Case No. XXI-R-927, the Board, by Order duly made, having directed investigation and hearing in this case, a petition and amended petition having been duly filed in Case No. XXI-R-928, a petition having been duly filed in Case No. XXI-R-1062, and it appearing to the Board that questions affecting commerce have arisen in Cases Nos. XXI-R-928

and XXI-R-1062, the Board having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act,

It Is Hereby Ordered that the Regional Director for the Twenty-First Region conduct an investigation and provide for a hearing upon due notice, pursuant to Section 9(c) of the National Labor Relations Act and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 2, as amended, and report to the Board as to such investigation and hearing in Cases Nos. XXI-R-928 and XXI-R-1062, and

It Is Further Ordered, pursuant to Article III, Section 10(c)(2) of the said Rules and Regulations that Cases Nos. XXI-R-927, XXI-R-928, and XXI-R-1062 be, and they hereby are, consolidated.

Dated, Washington, D. C., March 27, 1940.

By direction of the Board:

BEATRICE M. STERN
Acting Secretary

BOARD'S EXHIBIT No. 1-I

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-R-927
Consolidated with

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Case No. XXI-R-928

HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Case No. XXI-R-1062

TIMES MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

NOTICE OF HEARING

There has heretofore been filed with the National Labor Relations Board, Twenty-first Region, petition and amended petitions by the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., alleging that a question affecting commerce has arisen concerning the representation of the employees of the above-named companies at Los Angeles, California, and requesting that, pursuant to authority granted in Section 9 (c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify the name or names of the representatives that have been designated or selected by such employees.

Copies of said petition and amended petitions are attached hereto.

It appearing to the National Labor Relations Board that a question affecting commerce has arisen concerning the representation of the employees of said companies,

You Are Hereby Notified that, pursuant to Section 9 (c) of the National Labor Relations Act, on the 16th day of May, 1940, at 9:30 o'clock in the forenoon, in Room 808, United States Postoffice and Courthouse, Temple and Spring Streets, Los Angeles, California, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with its Rules and Regulations, Series 2—as amended, Article IV, Section 2, and Article III, Section 3, upon the question of representation affecting commerce which has arisen, at which time and place you shall have the right to appear, in person or otherwise, and give testimony.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 2—as amended, made and published by the National Labor Relations Board.

In Witness Whereof, the National Labor Relations Board has caused this, its Notice of Hearing, to be signed by the Regional Director for the Twenty-first Region on the 12th day of April, 1940.

[Seal] WALTER P. SPRECKELS

Walter P. Spreckels,
Regional Director, 21st Region
National Labor Relations Board
808 U.S. Postoffice & Courthouse
Los Angeles, California

BOARD'S EXHIBIT No. 1-L

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-R-1084
250 (inv.)

In the matter of HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT.) and NEWSBOYS L. I. UNION No. 75, CIO, Petitioner.

PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Name of employer—Hearst Publications, Incorporated (Los Angeles Examiner Department).

Address—1111 So. Broadway, Los Angeles, California.

General nature of business—Newspaper Publishing.

Approximate total number of employees_____.

Description of the bargaining unit which petitioner claims is appropriate All newsboys engaged in the street sale of the Los Angeles Examiner at established spots and corners within the City of Los Angeles, California, excluding bootjackers, temporary and casual newsboys, and newsboys who sell Sunday copies of the Los Angeles Examiner only.

Approximate number of employees in such unit—310.

Number or percentage of employees in such unit

who have designated or selected petitioner to be their representative for collective bargaining—250.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—None.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: The Union has requested bargaining conferences with representatives of the Los Angeles Examiner, which requests have been ignored by the Los Angeles Examiner.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

NEWSBOYS L. I. UNION
No. 75, CIO
GENE ALLEY
Gene Alley
Financial Secretary
Room 304, 212 West 3rd St.
Los Angeles
MU 5747

Subscribed and sworn to before me this 10th day of May, 1940 at Los Angeles Calif

ROGER G. McGUIRE,
Field Examiner
NATIONAL LABOR RELATIONS BOARD
U. S. Post Office & Court House Bldg.
Los Angeles, California

BOARD'S EXHIBIT No. 1-M

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-R-927
consolidated with

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Case No. XXI-R-928

HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Case No. XXI-R-1062

TIMES MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

AMENDED NOTICE OF HEARING

Please Take Notice that the date of the hearing in the above entitled matters is hereby enlarged to June 10, 1940, at the same time and place as specified in the Notice of Hearing heretofore issued.

[Seal] WALTER P. SPRECKELS
Walter P. Spreckels,
Regional Director,
21st Region
National Labor Relations Board
808 U.S. Postoffice & Courthouse Bldg.,
Los Angeles, California

Dated: May 15, 1940

BOARD'S EXHIBIT No. 1-P

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-R-1062
250 inv.

In the matter of THE TIMES-MIRROR COMPANY and NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, LOS ANGELES, CALIFORNIA, C.I.O., Petitioner.

AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Name of employer—The Times-Mirror Company.

Address—Second and Spring Streets, Los Angeles, California.

General nature of business—Newspaper publisher.

Approximate total number of employees—1200.

Description of the bargaining unit which petitioner claims is appropriate—All newsboys (called hustlers) selling the Los Angeles Times within the city limits of Los Angeles and Glendale, California, except temporary newsboys, casual newsboys, and newsboys who sell Sunday only copies of the Times.

Approximate number of employees in such unit—250.

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining—195.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit—None.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: The Times-Mirror Company has refused to bargain collectively with the representatives of petitioning union because it contends that newsboys are not employees of the Company within the meaning of the Act.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, LOS ANGELES, CALIFORNIA, C.I.O.

By: GENE ALLEY,
Gene Alley,
Secretary,
212 W. Third St.,
Los Angeles, Calif.
Mutual 5747

Subscribed and sworn to before me this 4th day of June, 1940 at 808 U. S. Post Office & Court House Bldg. at Los Angeles, California.

By: FRANK A. MOURITSEN,
Frank A. Mouritsen, Attorney
National Labor Relations Board
U. S. Post Office & Court House Bldg.
Los Angeles, California.

BOARD'S EXHIBIT No. 1-R

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-R-1062

Consolidated with XXI-R-927 and XXI-R-928.

In the Matter of THE TIMES MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

MOTION TO DISMISS PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT.

Comes now The Times-Mirror Co., a corporation, and severing itself from all other persons and appearing specially for the purpose of objecting to the jurisdiction of the National Labor Relations Board, moves to dismiss the Petition of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act, in so far as said petition pertains to The Times-Mirror Co.

Said motion is made on each and all of the following grounds:

1. No one of the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is an employee of The Times-Mirror Co.

2. Each and all of the newsboys (called Hustlers) selling the Los Angeles Times in the city limits of Los Angeles is and are independent contractors.

3. No question affecting commerce has arisen or can arise concerning the representation of the alleged employees (said Union members) of The Times-Mirror Co.

4. The Board has no jurisdiction over The Times-Mirror Co. or over the business conducted by it.

5. The relations of The Times-Mirror Co. with the alleged employees (said Union members) are not subject to the jurisdiction of the Board.

6. No claimed labor dispute between The Times-Mirror Co. and said alleged employees (said Union members) can affect commerce within the meaning of the National Labor Relations Act.

The right to make this motion or to object to any adverse ruling on the same shall not be deemed waived by The Times-Mirror Co. by any participation by it in the proceedings before the Trial Examiner or the Board; the movant relies upon Article III, Section 4, and Article II, Sections 14-18, inclusive, of Rules and Regulations, Series 2—as amended, of the National Labor Relations Board.

Dated: June 4, 1940.

COSGROVE & O'NEIL,
T. B. COSGROVE,
F. B. YOAKUM, Jr.;
By T. B. COSGROVE
Attorneys for
The Times-Mirror Co.

BOARD'S EXHIBIT No. 1-S

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-R-1062

Consolidated with XXI-R-927 and XXI-R-928

In the Matter of THE TIMES-MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.

ANSWER TO PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT.

Reserving all rights asserted under its motion filed concurrently herewith, The Times-Mirror Co., a corporation, for itself alone, files this its Answer to Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act.

1. Denies that The Times-Mirror Co. is the employer of the persons claimed to be represented by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.

2. Denies that any or "all newsboys (called Hustlers) selling the Los Angeles Times in the city limits of Los Angeles" is the appropriate bargaining unit.

3. Denies that "such unit" has 280 employees, or any employees, of The Times-Mirror Co. among

newsboys (called Hustlers) selling the Los Angeles Times in the city limits of Los Angeles.

4. Denies that the "number or percentage of employees in such unit who have designated or selected" said Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. "to be their representative for collective bargaining" is 195, or any other greater or lesser number.

5. Denies that The Times-Mirror Co. has refused to bargain with any group representing its employees, and alleges that said Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., does not represent a majority or any substantial fractional part of the newsboys (called Hustlers) selling the Los Angeles Times within the city limits of Los Angeles.

6. Denies that any question concerning the representation of said newsboys (called Hustlers) is a question affecting commerce within the meaning of the National Labor Relations Act.

Wherefore, The Times-Mirror Co. prays that the Petition of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act be dismissed.

COSGROVE & O'NEIL,
T. B. COSGROVE,
F. B. YOAKUM, JR.,
By T. B. COSGROVE,
Attorneys for The Times-Mirror Co.

(Duly Verified)

BOARD'S EXHIBIT No. 1-T

United States of America
Before the National Labor Relations Board

Case No. XXI-R-927

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC., and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, C. I. O.

Case No. XXI-R-928

HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL IND. UNION, No. 75, C. I. O.

Case No. XXI-R-1062

TIMES-MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL No. 75, C. I. O.

Case No. XXI-R-1084

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT) and NEWSBOYS L. I. UNION No. 75, C. I. O.

ORDER DIRECTING INVESTIGATION AND HEARING, AND CONSOLIDATING CASES

A petition and amended petition, pursuant to Section 9(c) of the Act, having been filed in Case No. XXI-R-927, the Board, by Order duly made,

having directed investigation and hearing in this case, a petition and amended petition having been duly filed in Case No. XXI-R-928, a petition having been duly filed in Case No. XXI-R-1062, the Board, by Order duly made, having directed investigation and hearing in Cases Nos. XXI-R-928 and XXI-R-1062 and having consolidated Cases Nos. XXI-R-927, XXI-R-928, and XXI-R-1062, and a petition having been duly filed in Case No. XXI-R-1084, and it appearing to the Board that questions affecting commerce have arisen in Case No. XXI-R-1084, and the Board deeming it necessary in order to effectuate the purposes of the Act,

It Is Hereby Ordered that the Regional Director for the Twenty-first Region conduct an investigation and provide for an appropriate hearing upon due notice, pursuant to Section 9(c) of the National Labor Relations Act and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 2, as amended, and report to the Board regarding such investigation and hearing in Case No. XXI-R-1084; and

It Is Further Ordered, pursuant to Article III, Section 10(c)(2) of the said Rules and Regulations that Case No. XXI-R-1084 be, and it hereby is, consolidated with Cases Nos. XXI-R-927, XXI-R-928, and XXI-R-1062.

Dated, Washington, D. C., June 5, 1940.

By direction of the Board:

NATHAN WITT,
Nathan Witt,
Secretary.

BOARD'S EXHIBIT No. 1-Y

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-R-927
240 inv.

In the matter of STOCKHOLDERS PUBLISHING COMPANY, INC., and NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, LOS ANGELES, CALIFORNIA, C. I. O., Petitioner.

SECOND AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT.

Name of employer, Stockholders Publishing Company, Inc.

Address, Twelfth and Los Angeles Streets, Los Angeles, California.

General nature of business, Newspaper publishing.

Approximate total number of employees 665. Description of the bargaining unit which petitioner claims is appropriate. All main spot newsboys, full time newsboys, and check men who are engaged to sell The News within the city limits of

Los Angeles, California, excluding bootjackers, temporary, casual, and part time newsboys.

Approximate number of employees in such unit, 240.

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining, 190.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit, None.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: The Company refuses to bargain with representatives of Union because it contends newsboys are not employees within the meaning of the Act.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, LOS ANGELES, CALIFORNIA, C.I.O.

By: GENE ALLEY,

Gene Alley, Financial Secretary, 212 West 3rd St., Los Angeles, California. Mutual 5747.

Subscribed and sworn to before me this 6th day of June, 1940, at Los Angeles, Calif.

FRANK A. MOURITSEN,

Frank A. Mouritsen, Attorney National Labor Relations Board, U. S. Post Office & Court House Bldg., Los Angeles, California.

BOARD'S EXHIBIT No. 1-BB

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-R-928
220 inv.

In the matter of HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and NEWSBOYS LOCAL INDUSTRIAL UNION, No. 75, LOS ANGELES, CALIFORNIA, C.I.O., Petitioner.

SECOND AMENDED INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT.

Name of employer, Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department).

Address 1243 Trenton Street, Los Angeles, Calif., and 410 Hearst Bldg., San Francisco, California.

General nature of business, Newspaper publishing.

Approximate total number of employees, 1040.

Description of the bargaining unit which petitioner claims is appropriate, All main spot newsboys, full time newsboys, and check men who are engaged to sell the Los Angeles Evening Herald & Express within the city limits of Los Angeles, California, excluding bootjacks, temporary, casual, and part time newsboys.

Approximate number of employees in such unit, 220.

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining, 210.

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit, None.

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: The

Company refuses to bargain with representatives of Union because it contends newsboys are not employees within the meaning of the Act.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Subscribed and sworn to before me this 6th day of June, 1940, at Los Angeles, Calif.

FRANK A. MOURITSEN,
Attorney, National Labor Relations Board, U. S. Post Office & Court House Bldg., Los Angeles, California.

NEWSBOYS INDUSTRIAL UNION, No. 75, LOS ANGELES, CALIFORNIA, C.I.O.

By: GENE ALLEY,
Financial Secretary, 212 West 3rd St., Los Angeles, California. Mutual 5747.

BOARD'S EXHIBIT No. 1-CC

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-R-928
Consolidated with
Case No. XXI-R-927
and
Case No. XXI-R-1062

In the Matter of HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL IND. UNION No. 75, CIO, Petitioner.

MOTION TO DISMISS AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9 (c) OF THE NATIONAL LABOR RELATIONS ACT.

Comes now the respondent, Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated, appearing for itself alone, specially and not generally and only for the purpose of this motion and for no other purpose whatsoever, and moves for dismissal of the petition filed herein upon each of the following grounds:

(1) That the National Labor Relations Board has no jurisdiction over respondent.

(2) That respondent is not engaged in com-

merce among the several states or between the District of Columbia or any territory of the United States and any state or other territory or between any foreign country or any state, territory or the District of Columbia or within the District of Columbia or any territory or between points in the same state or territory or any other state or territory or the District of Columbia or any foreign country, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

(3) That no member of the petitioner, to-wit, Los Angeles Newsboys Local Industrial Union No. 75, CIO, is an employee of this respondent, and; therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(4) That the persons alleged in said petition to be members of the unit described therein, to-wit, Newsboys who sell papers at main spots and checkmen within the city limits of Los Angeles, California, in so far as said news vending activities are concerned, are not employees of, nor is any one of them an employee of this respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(5) That no one of the persons designated in said petition as a member of the unit in said petition described is an employee of this respondent, and, therefore, the National Labor Relations Board

has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(6) That each one of the persons designated in said petition as a member of the unit in said petition described is, in the conduct of his news vending activities, an independent contractor or merchandiser, and, therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(7) That each one of the persons designated in said petition as a member of the unit in said petition described is, in the conduct of his news vending activities, engaged solely in intra-state commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(8) That no one of the persons designated in said petition as a member of the unit in said petition described is, in the conduct of his news vending activities, engaged in interstate commerce or in any business activity having a close, intimate, substantial or any relation to trade, traffic or commerce among the several states or the territories of the United States and foreign countries, and, therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(9) That no refusal of this respondent to bargain with the representative of said petitioner can burden or obstruct commerce and such refusal cannot and has not led or tended to lead, and cannot and does not now and will not lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(10) That no cessation of the news vending activities of the persons designated in said petition as members of the unit described in said petition, or any of them, can or will burden or obstruct commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(11) That no cessation of the news vending activities of the persons designated in said petition as members of the unit described in said petition, or any of them, can or will lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent and has no jurisdiction to consider or act upon said petition other than to dismiss the same.

(12) That the National Labor Relations Board has no jurisdiction over the relations of this respondent with the persons engaged in the independ-

ent business of vending the newspaper published by this respondent.

This motion is made by respondent in reliance upon the rights granted by Article II, Sections 14 to 18 inclusive, and Article III, Section 4, of Rules and Regulations, Series 2, as amended, of the National Labor Relations Board, and its right to make this motion, or to object to any ruling upon the same, shall not be deemed waived by the filing of an answer or by other participation by this respondent in the proceedings before the Trial Examiner or the Board.

Dated at Los Angeles, California, this 6th day of June, 1940.

FLINT & MacKAY.
By EDWARD L. COMPTON,
Attorneys for Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated.

BOARD'S EXHIBIT No. 1-DD

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-R-1062

Consolidated with XXI-R-927 and XXI-R-928

In the Matter of THE TIMES MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

STIPULATION RE APPLICABILITY OF MOTION TO DISMISS AND ANSWER TO AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES.

It Is Hereby Stipulated that the Motion to Dismiss Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act, filed herein by The Times-Mirror Co. on June 4, 1940, shall be deemed to have been made with respect to the Amended Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act, which Amended Petition was served on counsel for The Times-Mirror Co. on June 4, 1940, but subsequent to the filing by The Times-Mirror Co. of its aforesaid Motion to Dismiss.

It Is Further Stipulated that the Answer to Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act, filed herein by The Times-Mirror Co. on June 4, 1940, shall be deemed to have been filed with respect to the Amended Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act, which Amended Petition was served on counsel for The Times-Mirror Co. on June 4, 1940, but subsequent to the filing of its aforesaid Answer; and that the allegation in

the Amended Petition that the appropriate bargaining unit is "all newsboys (called Hustlers) selling the Los Angeles Times within the city limits of Los Angeles and Glendale, California, except temporary newsboys, casual newsboys, and newsboys who sell Sunday only copies of the Times" be deemed denied without necessity of filing formal Answer denying such allegation.

Dated: June 6, 1940.

WALTER SPRECKELS,
Walter Spreckels,
Regional Director Twenty-first Region, National Labor Relations Board.

FRANK A. MOURITSEN,
Frank A. Mouritsen,
Attorney, National Labor Relations Board.

COSGROVE & O'NEIL,

T. B. COSGROVE,

F. B. YOAKUM, JR.,

By F. B. YOAKUM, JR.,
Attorneys for The Times-Mirror Co.

BOARD'S EXHIBIT No. 1-FF

United States of America
Before the National Labor Relations Board
Twenty-First Region
Case No. XXI-R-927

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC., and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

MOTION TO DISMISS PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT.

Comes now Stockholders Publishing Company, Inc., a corporation, and appearing only specially, and for itself only, for the purposes of this Motion, and moves the Board to dismiss the petition aforesaid as to Stockholders Publishing Company, Inc. for lack of jurisdiction.

This motion is made on each and all of the following grounds:

That the National Labor Relations Board has no jurisdiction over Stockholders Publishing Company, Inc., for the following reasons:

1. That all newsboys selling newspapers for the Stockholders Publishing Company, Inc., in Los Angeles are independent contractors and that no one of said newsboys as such, is an employee of Stockholders Publishing Company, Inc.

2. That no question affecting commerce has arisen concerning or affecting the representation of employees of Stockholders Publishing Company, Inc.

3. That the relationship of the newsboys (the union members) with Stockholders Publishing Company, Inc., are not subject to the jurisdiction of the Board for the reason amongst others, that said union members are not employees of Stockholders Publishing Company, Inc., and that no labor dispute, therefore, between said Stockholders Publishing Company, Inc. and such alleged employees can affect commerce within the meaning of the National Labor Relations Act.

The right is at all times reserved by Stockholders Publishing Company, Inc. to participate in the proceedings aforesaid before the Examiner or the Board, without thereby waiving the right to rely on this Motion or to object to any adverse ruling which may be made thereupon, all in accordance with the rules and regulations as amended, of said Board.

Dated this 7th day of June, 1940.

BINFORD & BINFORD,

By HOWARD M. BINFORD,

Attorneys for Stockholders Publishing Company, Inc.

AFFIDAVIT OF SERVICE BY MAIL

(C. C. P. 1013a)

(Must be attached to original or a true copy of paper served)

Case No. XXI-R-927

State of California
County of Los Angeles—ss.

Howard M. Binford, being duly sworn, says, that affiant is a citizen of the United States, over 18 years of age, a resident of Los Angeles County and not a party to the within action. That affiant's business address is 606 So. Hill Street, Los Angeles, California. That affiant served a copy of the attached Motion to Dismiss Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act by placing said copy in an envelope addressed to Los Angeles Evening Herald & Express, Los Angeles Examiner, Times-Mirror Company, Frank A. Mouritsen, attorney for National Labor Relations Board, Newsboys Local Industrial Union No. 75, C. I. O. at their office address, which is 1243 Trenton Ave., L. A.—1111 So. Broadway, L. A.—202 W. 1st St., L. A.—U. S. Post Office & Courthouse Bldg., L. A.—212 West 3rd St., L. A., which envelope was then sealed and postage fully prepaid thereon, and thereafter was on June 7, 1940, deposited in the United States Post Office at Los Angeles, Calif. That there is delivery service by United States mail at the place

so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

HOWARD M. BINFORD.

Subscribed and sworn to before me June 7, 1940.

[Seal] V. I. MacMAHON,
Notary Public in and for the
County of Los Angeles,
State of California.

AFFIDAVIT OF SERVICE BY MAIL
(C. C. P. 1013a)

Case No. XXI-R-927

State of California
County of Los Angeles—ss.

Howard M. Binford, being duly sworn, says that affiant is a citizen of the United States, over 18 years of age, a resident of Los Angeles County and not a party to the within action. That affiant's business address is 606 So. Hill St., Los Angeles, Calif. That affiant served a copy of the attached Answer of Stockholders Publishing Company, Inc. to Second Amended Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act by placing said copy in an envelope addressed to Los Angeles Evening Herald & Express, Los Angeles Examiner, Times-Mirror Company, Frank A. Mouritsen, attorney for National Labor Relations Board, at their office address, which is Newsboys Local Industrial

Union No. 75, C. I. O., 1243 Trenton Ave., L. A.—1111 So. Broadway, L. A.—202 W. 1st St., L. A.—U. S. Post Office & Courthouse Bldg., L. A.—212 West 3rd St., L. A., which envelope was then sealed and postage fully prepaid thereon, and thereafter was on June 7, 1940, deposited in the United States Post Office at Los Angeles, Calif. That there is delivery service by United States mail at the place so addressed, or regular communication by United States mail between the place of mailing and the place so addressed.

HOWARD M. BINFORD.

Subscribed and sworn to before me June 7, 1940.

[Seal] V. I. MacMAHON,
Notary Public in and for the
County of Los Angeles,
State of California.

BOARD'S EXHIBIT No. 1-GG

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-R-927

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC., and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

ANSWER OF STOCKHOLDERS PUBLISHING COMPANY, INC. TO SECOND AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9 (c) OF THE NATIONAL LABOR RELATIONS ACT.

Comes now Stockholders Publishing Company, Inc., a corporation, appearing for itself alone and without waiving any rights claimed by it in its Motion filed herein, and answers the Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act, as follows, to-wit:

1. Stockholders Publishing Company, Inc. denies that the relation of employer and employee exists between it and the sundry persons claimed to be represented by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.

2. Denies that any appropriate bargaining unit can be established or has been established between all main spot newsboys, full time newsboys, and check men who are engaged to sell The News within the city limits of Los Angeles, California, excluding bootjackers, temporary, casual, and part time newsboys, and Stockholders Publishing Company, Inc.

3. Denies that there are 240 employees or any employees of Stockholders Publishing Company, Inc., in such unit.

4. Denies that the "number or percentage of employees in such unit who have designated or selected petition to be their representative for collective bargaining" is 190 or any other number.

5. Denies that Stockholders Publishing Company, Inc., has refused to bargain with any appropriate unit or group representing its employees, and denies that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. represent a majority or any employees of Stockholders Publishing Company, Inc.

6. Denies that any question concerning the representation of "all main spot newsboys, full time newsboys, and check men who are engaged to sell The News within the city limits of Los Angeles, California, excluding bootjackers, temporary, casual, and part time newsboys" is a question affecting commerce within the meaning of the National Labor Relations Act.

Wherefore Stockholders Publishing Company, Inc. prays that the petition aforesaid be dismissed.

BINFORD & BINFORD,
By HOWARD M. BINFORD,
Attorneys for Stockholders
Publishing Company, Inc.

(Duly verified.)

BOARD'S EXHIBIT No. 2

United States of America
Before the National Labor Relations Board
21st Region

Case No. XXI R 928

Consolidated with Case No. XXI R 927
and
Case No. XXI R 1062

In the Matter of HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL IND. UNION No. 75, C. I. O.
Petitioner.

AGREED STATEMENT OF FACTS

For the purpose of this proceeding, the undersigned, as counsel for the National Labor Relations Board, Twenty-first Region, and counsel for Los Angeles Evening Herald and Express, a separate business enterprise which is wholly owned and operated by Hearst Publications, Incorporated, respectively, do hereby stipulate and agree that the statements and information hereinafter set forth shall be received in evidence in the above entitled proceeding as an agreed statement of facts.

1. The Los Angeles Evening Herald and Express is an evening newspaper published daily except Sunday, at its plant situated at Los Angeles, California, and in which plant no other business is con-

ducted. It is a separate business enterprise wholly owned by Hearst Publications, Incorporated, a corporation organized and existing under and by virtue of the laws of the State of California, and incorporated on the twenty-second day of April, 1924. Hearst Publications, Incorporated, has its principal office and place of business at San Francisco, California. Hearst Publications, Incorporated, also wholly owns and publishes respectively as separate and independent enterprises, various daily and Sunday newspapers known as follows and published at the following places and respectively at separate plants and establishments and which enterprises have no connection with either the manufacture, publication, sale or distribution of said Los Angeles Evening Herald and Express, to-wit:

"Los Angeles Examiner", Los Angeles, California.

"San Francisco Examiner", San Francisco, California.

"San Francisco Call-Bulletin", San Francisco, California.

"Oakland Post-Enquirer", Oakland, California.

"Seattle Post-Intelligencer", Seattle, Washington.

Hearst Publications, Incorporated, has as subsidiaries the following corporations organized and incorporated in the states and on the dates indicated, and such corporations publish respectively the newspaper publications indicated, to-wit:

A. American Weekly, Inc., incorporated in New

York on December 13, 1921, which corporation publishes "The American Weekly", a Sunday magazine and comic section which is a supplement and part of various Sunday newspapers published in various cities and states throughout the United States. This enterprise has no connection with either the manufacture, publication, sale or distribution of said "Los Angeles Evening Herald and Express" and is wholly independent thereof.

B. Evening American Publishing Company, incorporated in Illinois on December 12, 1900, which corporation publishes "Chicago Evening American", a daily evening newspaper published in the city of Chicago, Illinois. This enterprise has no connection with either the manufacture, publication, sale or distribution of said "Los Angeles Evening Herald and Express" and is wholly independent thereof.

C. Pitt Publishing Company, incorporated in Pennsylvania on July 21, 1927, which corporation publishes the "Pittsburgh Sun-Telegraph", a daily evening and Sunday morning newspaper published in the city of Pittsburgh, Pennsylvania, and also operates at Pittsburgh, Pennsylvania, through its subsidiary WCAE, Incorporated, radio Station WCAE. These enterprises have no connection with either the Manufacture, publication, sale or distribution of said "Los Angeles Evening Herald and Express" and are wholly independent thereof.

C. The Times Publishing Company, incorporated in Michigan on October 14, 1921, which corpo-

ration publishes "Detroit Times", a daily evening and Sunday morning newspaper published in the city of Detroit, Michigan. This enterprise has no connection with either the manufacture, publication, sale or distribution of said "Los Angeles Evening Herald and Express" and is wholly independent thereof.

All of the capital stock of Hearst Publications, Incorporated, is owned by Hearst Consolidated Publications, Inc., a corporation organized in the State of Delaware on May 9, 1930, and all of the common stock of Hearst Consolidated Publications, Inc. is owned by The Hearst Corporation, a corporation organized under the laws of the State of Delaware on August 25, 1931, and all of the stock of The Hearst Corporation is owned by American Newspapers, Inc., a corporation organized under the laws of the State of Delaware on July 13, 1920, and all of the common capital stock of American Newspapers, Inc. is equitably owned by Mr. William Randolph Hearst. The legal title to said common capital stock is in Clarence J. Shearn as Voting Trustee. Hearst Consolidated Publications, Inc., The Hearst Corporation, and American Newspapers, Inc. have various subsidiaries engaged in the publishing and other businesses in various states of the United States. That no one of said corporations or subsidiaries in this paragraph mentioned has any connection or relation with either the manufacture, publication, sale or distribution of said "Los Angeles Evening Herald and Express" and

are each wholly independent thereof other than by related stock ownership as herein indicated.

2. The Los Angeles Evening Herald and Express uses the wire reports of International News Service, Associated Press, United Press, and Dow-Jones Financial Service, which in many instances, embrace news sent from without the State of California. All of these wire services have Los Angeles coverage of their own. To some wire services, the Los Angeles Evening Herald and Express gives the local news collected by it, and to other wire services it does not—depending upon the contract with the respective wire service, but to at least one wire service which is engaged in interstate transmission of news, it does give the news collected by its own organization. The average daily wordage received from the above wire services is as follows:

International News Service	50,000
Associated Press	220,000
United Press	32,000
Dow-Jones Financial Service	30,000

The same applies to photographs which are taken by their photographers, and are made available to some of the photographic services to which they subscribe, which photographic services also have their own Los Angeles coverage.

3. The said newspaper, to-wit: the Los Angeles Evening Herald and Express, is distributed throughout the State of California, but principally in the metropolitan area of Los Angeles, and has a daily average net paid circulation of 243,022, of which

only 903 copies are sold or distributed outside the State of California, the balance being sold and distributed wholly within the State of California. In other words, only 37/100 of 1% of its circulation of said newspaper is sold and distributed outside the State of California, while 99 63/100% of its circulation of said newspaper is sold and distributed wholly within the State of California.

4. Principal raw materials used in the printing of the Los Angeles Evening Herald and Express are newsprint, mats, and ink. During the year 1939, all of the newsprint was received from the States of Washington, Oregon, and the Dominion of Canada, and consisted of 18,915 tons. During said period all mats were received from the State of New York and consisted of 60,700 in number. The ink used, is manufactured in the State of California, and for said period consisted of 664,408 lbs.

5. Said Los Angeles Evening Herald and Express during the year 1939, received and published approximately 40 feature services, many of which were prepared and originated in states other than the State of California. Some of the features purchased are as follows:

Wishing Well
The Neighbors
Snickeroos
Hatlo Cartoons
Edwin C. Hill Column
Dale Carnegie
Helen Rowland

Good Manners
Beatrice Fairfax
Hap Hopper
Elsie Robinson
Room & Board Cartoon
Little Orphan Annie Cartoon
Moon Mullins Cartoon
Crossword Puzzles
Mickey Mouse Cartoon
Marriage Meddlers
Your Horoscope
Lewis Haney
Toots & Casper Cartoon

6. During the year 1939, an average of 39% of the space in said Los Angeles Evening Herald and Express was devoted to advertising. That during the year 1939, 84% of the advertising contained in said Los Angeles Evening Herald and Express wholly originated from within the State of California, and 16% of said advertising, during said period, originated from without the State of California. That as of May 4, 1940, said business enterprise, to-wit, the Los Angeles Evening Herald and Express, had on its payroll as employees 1106 persons.

7. Said newspaper, as of May 4, 1940, had 479 employees in its Circulation and Transportation Departments in the following classifications:

Payroll carrier boys
Collectors

Solicitors
Branch Managers
District Managers
Wholesalers
Downtown street men
Checkers and verifiers
Clerks
Distributors
Payroll corner boys
Promotion man
Stenographers
Cashier
Bookkeepers and clerks
Drivers
Mechanics
Platform men and helpers

FRANK A. MOURITSEN,
Counsel for the Board.
FLINT & MacKAY,
By EDWARD L. COMPTON,
Attorneys for Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated.

BOARD'S EXHIBIT No. 2-A

[Title of Board and Cause.]

AMENDMENT TO AGREED STATEMENT OF FACTS

It is hereby stipulated and agreed, by and between the undersigned as Counsel for the National Labor Relations Board, Twenty-first Region, and Counsel for the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated, that the Agreed Statement of Facts, heretofore and on June 6, 1940, signed by Counsel and filed in this action, shall be and the same is hereby amended in the following particulars:

(1) Paragraph B, appearing on page 2 of said Agreed Statement of Facts, is hereby amended to read as follows:

"B. Illinois Publishing and Printing Company, incorporated in Illinois on December 9, 1904, which corporation publishes "Chicago Herald-American", a daily evening and Sunday morning newspaper published in the City of Chicago, Illinois. This enterprise has no connection with either the manufacture, publication or distribution of said "Los Angeles Evening Herald and Express", and is wholly independent thereof."

(2) Paragraph C, appearing on page 3 of said Agreed Statement of Facts, referring to The Times Publishing Company, is amended by striking paragraph designation "C" therefrom and inserting in lieu thereof paragraph designation "D".

Signed at Los Angeles, California, this 11th day of June, 1940.

FRANK A. MOURITSEN
Counsel for the National Labor Relations Board
FLINT & MacKAY
By EDWARD L. COMPTON,
Attorneys for Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated.

BOARD'S EXHIBIT No. 8

[Title of Board and Cause.]

STIPULATION

For the purpose of this proceeding, the undersigned, as counsel for the National Labor Relations Board, Twenty-first Region, and counsel for Los Angeles Evening Herald and Express, a separate business enterprise which is wholly owned and operated by Hearst Publications, Incorporated, respectively, do hereby stipulate and agree that the following terms in the amended petition of Los Angeles Newsboys Local Industrial Union No. 75, CIO, shall be deemed to have the following meanings:

1. The term "full-time newsboy" means an individual who sells to the general public all editions

or all except the first edition of the Los Angeles Evening Herald and Express five or more days per week, and does not include check men, bootjackers, temporary, casual and part-time newsboys, as herein defined.

2. The term "bootjacker" is an individual who purchases newspapers for sale other than at an established corner or other established place of sale.

3. The term "part-time newsboy" means an individual who sells to the general public less than six editions of the Los Angeles Evening Herald and Express per day, and does not include check men, full-time newsboys, bootjackers, temporary and casual newsboys as herein defined.

4. The term "check men" shall be deemed to be synonymous with the term "wholesalers", and shall be deemed to be covered by the evidence in this proceeding to date.

5. The terms "temporary" newsboy and "casual" newsboy shall be deemed to have their ordinary and common significance.

It is further stipulated that this stipulation is intended to be merely for the purpose of defining terms, and is not intended to be a recognition by the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated that the classes of individuals defined herein, or any of them, constitute a proper bargaining unit, or any unit.

Dated at Los Angeles, California, this 14th day of June, 1940.

FRANK A. MOURITSEN
Counsel for the Board
FLINT & MacKAY
By EDWARD L. COMPTON
Attorneys for Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated.
NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, LOS ANGELES, CALIFORNIA, C. I. O.
By ROY ELEY
By PATRICK COMORRE
Representatives

BOARD'S EXHIBIT No. 10

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-R-927

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

AGREED STATEMENT OF FACTS

For the purpose of this proceeding the undersigned as counsel for the National Labor Relations

Board, Twenty-First Region, and counsel for Stockholders Publishing Company, Inc., a corporation, publishers of "The News", do hereby stipulate and agree that the statements and information hereinafter set forth shall be received in evidence in the above entitled proceeding as an agreed statement of facts:

1. The News is a twenty-four hour newspaper published daily except Sunday, at its plant situated at Los Angeles, California, and in which plant no other business is conducted.

2. Prior to April 1, 1940, "The News" was published under the name of (in the morning) as "Daily News", and (in the afternoon) as "Evening News".

3. That Stockholders Publishing Company, Inc. referred to above is a corporation organized under date of March 18, 1929, under the laws of the State of Nevada and has a principal place of business in the City of Los Angeles, County of Los Angeles and State of California.

4. The News uses the wire reports of United Press, which service furnishes news sent from without the State of California. The average daily wordage received from such wire service is 27,000 words.

5. The principal raw materials used in the printing of "The News" are newsprint, ink, mats and photographic supplies.

6. During the year of 1939 all of the newsprint

was received from the states of Washington and Oregon in the United States of America and the Dominion of Canada, and the cost of the same was approximately $470,000.00. During said period of time all mats used were received from outside the State of California and the amount paid for the same was approximately $4800.00. That during such period of time the ink used cost approximately $16,000.00, and was all purchased at Los Angeles, California. That the cost of photographic supplies during said period of time was approximately $3,600.00, the most of which were purchased within the State of California.

7. The current average daily circulation of "The News" (formerly Daily News and Evening News as aforesaid) both within and without the State of California, during the month of March, 1940. was as follows:

Within the State of California—195,191.
Outside the State of California—534.

8. The News during the year of 1939 received and published the following feature services:

NEA Service, Inc.,
1200 W. 3rd St., Cleveland, Ohio.
Household Arts, Inc.,
259 W. 14th St., New York, New York.
McClure Syndicate,
75 West Street, New York, New York.
Chicago Tribune-New York News Syndicate, Inc.,

220 E. 42nd St., New York, New York.
K. C. Beaton,
14134 Valeria St., Van Nuys, California.
McNaught Syndicate, Inc.,
45 East Putnam Ave., Greenwich, Connecticut.
Bell Syndicate, Inc.,
247 W. 43rd St., New York, New York.
Illustrated Fashion Features,
160 Fifth Ave., New York, New York.
Publishers Syndicate,
30 North La Salle, Chicago, Illinois.
United Feature Syndicate,
220 E. 42nd Street, New York, New York.
United Press Associations,
220 E. 42nd St., New York, New York.
Acme Newspictures, Inc.,
220 E. 42nd St., New York, New York.
City News Service of Los Angeles,
229 North Broadway, Los Angeles, California.
Editorial Research Reports,
1013 Thirteenth St., N. W., Washington, D. C.
King Feature Syndicate, Inc.,
235 East 45th Street, New York, New York.

9. Approximately 9,090,000 lines of space were devoted to advertising local, national and classified during the year of 1939, of which approximately 1,500,000 lines was devoted to national advertising

and approximately 5,860,000 lines to local advertising.

June 19, '40.

FRANK A. MOURITSEN
Counsel for the Board
BINFORD & BINFORD
By L. B. BINFORD
Attorneys for Stockholders
Publishing Company, Inc.

BOARD'S EXHIBIT No. 14

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-R-1062
Consolidated with XXI-R-927, XXI-R-928 and XXI-R-1084.

In the Matter of THE TIMES-MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

AGREED STATEMENT OF FACTS

For the purpose of this proceeding and none other, It Is Hereby Agreed that the facts hereinafter recited may be received in evidence in the above entitled proceeding as an Agreed Statement of Facts.

1. The Los Angeles Times is a newspaper of

general circulation published daily and Sunday by The Times-Mirror Company, a California corporation, with its principal place of business in Los Angeles, California. The plant at which said newspaper is published is located at First and Spring Streets, Los Angeles, California, and is devoted exclusively to publishing said newspaper.

2. The Los Angeles Times uses the wire reports of the Associated Press, the United Press, and Dow-Jones Financial News Service; it also receives wire service from Chicago Tribune and New York News. It obtains photographs from Wide World Photos and Associated Press. Information gathered and assembled by the Los Angeles Times, for publication, is available for use by the Associated Press. Photographs taken by photographers of the Los Angeles Times are available for use by the Associated Press and Wide World Photos. The Associated Press has its own news-gathering and photography facilties covering the City of Los Angeles and vicinity, and is not dependent upon the Los Angeles Times for local news or photographs. The Wide World Photos likewise has its own facilities, and is not dependent upon Los Angeles Times for acquiring photographs in the City of Los Angeles and vicinity.

3. Los Angeles Times is distributed principally throughout the City of Los Angeles and State of California. Its average daily net paid circulation for the year 1939 was 220,266 copies. Of this number, approximately 3,935 copies were sold or distributed daily outside the State of California. For the year 1939 the average daily out-of-state sales of

Los Angeles Times was approximately 1.7% of its average daily net paid circulation.

4. Los Angeles Times average Sunday net paid circulation for the year 1939 was 367,814 copies. Of this number, approximately 9,197 copies were sold or distributed each Sunday outside the State of California. For the year 1939 the average Sunday out-of-state sales of Los Angeles Times was approximately 2.5% of its average Sunday net paid circulation.

5. The principal raw materials used in publishing Los Angeles Times are newsprint, mats and ink. During the year 1939 newsprint of the value of $2,086,870.12 was purchased. All of said newsprint was purchased without the State of California. During said year mats in the amount of $6,909.00 were purchased from without the State of California. During said year ink in the amount of $99,476.85 was purchased, all from within the State of California.

6. During the year 1939 the Los Angeles Times received and published numerous features, many of them furnished by national syndicates, among the more prominent being:

Westbrook Pegler
Walter Lippman
American Institute of Public Opinion (Gallup Poll)
Frank Kent
George T. Hughes
Hedda Hopper

Red Ryder
Tarzan
Napoleon and Uncle Elby
Grin and Bear It.

7. During the year 1939 the average percentage of space in Los Angeles Times devoted to advertising was 39.9 per cent., approximately 8 per cent. of which constituted promotional or advertising matter pertaining to the Los Angeles Times. During 1939 national advertising constituted 14.1 per cent. of the total advertising appearing in the Los Angeles Times.

The execution of this stipulation by counsel for The Times-Mirror Company shall in no way constitute an admission by said company that National Labor Relations Board has jurisdiction over said company in so far as this proceeding is concerned; it is specifically agreed by all parties hereto that the Motion to Dismiss and Answer of The Times-Mirror Company, on file herein, are in no manner prejudiced by the execution of this stipulation.

Dated at Los Angeles, California, this 20th day of June, 1940.

WALTER SPRECKELS
Walter Spreckels,
Regional Director Twenty-First Region, National Labor Relations Board.

FRANK A. MOURITSEN
Frank A. Mouritsen,
Attorney, National Labor Relations Board.

LOS ANGELES NEWSBOYS' LOCAL INDUSTRIAL UNION No. 75, C. I. O.
By PATRICK COMORRE
By ROY ELEY

COSGROVE & O'NEIL,
T. B. COSGROVE,
F. B. YOAKUM, JR.,
By T. B. COSGROVE
Attorneys for The Times-Mirror Company

BOARD'S EXHIBIT No. 18

United States of America
Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-R-1084

In the Matter of HEARST PUBLICATIONS, INCORPORATED, (Los Angeles Examiner Department) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

AGREED STATEMENT OF FACTS

For the purpose of this proceeding, the undersigned as counsel for the National Labor Relations Board, Twenty-first Region, and counsel for Los Angeles Examiner, a separate business enterprise which is wholly owned and operated by Hearst

Publications, Incorporated, respectively, do hereby stipulate and agree that the statements and information hereinafter set forth shall be received in evidence in the above-entitled proceeding as an agreed statement of facts.

1. The Los Angeles Examiner is a morning newspaper published daily including Sunday, at its plant situated at Los Angeles, California, which plant is devoted exclusively to such publishing purposes. It is a separate business enterprise wholly owned by Hearst Publications, Incorporated, a corporation organized and existing under and by virtue of the laws of the State of California, and incorporated on the 22nd day of April, 1924. Hearst Publications, Incorporated, has its principal office and place of business at San Francisco, California. Hearst Publications, Incorporated, also wholly owns and publishes respectively as separate and independent enterprises, various daily and Sunday newspapers known as follows and published at the following places, and respectively at separate plants and establishments, and which enterprises have no connection with either the manufacture, publication, sale or distribution of said Los Angeles Examiner, to wit:

"Los Angeles Evening Herald and Express," Los Angeles, California;

"San Francisco Examiner," San Francisco, California;

"San Francisco Call-Bulletin," San Francisco, California;

"Oakland Post-Enquirer," Oakland, California;

"Seattle Post-Intelligencer," Seattle, Washington.

Hearst Publications, Incorporated, has as subsidiaries the following corporations organized and incorporated in the states and on the dates indicated, and such corporations publish respectively the newspaper publications indicated, to wit:

A. American Weekly, Inc., incorporated in New York on December 13, 1921, which corporation publishes "The American Weekly," a Sunday magazine (as well as a comic section) which is a supplement and part of various Sunday newspapers, including the Los Angeles Examiner, and including newspapers which are not Hearst newspapers;

B. Illinois Publishing and Printing Company, incorporated in Illinois on December 9, 1904, which corporation publishes "Chicago Herald-American," a daily evening and Sunday morning newspaper published in the City of Chicago, Illinois. This enterprise has no connection with either the manufacture, publication, sale or distribution of said "Los Angeles Examiner" and is wholly independent thereof;

C. Pitt Publishing Company, incorporated in Pennsylvania on July 21, 1927, which corporation publishes the "Pittsburgh Sun-Telegraph," a daily evening and Sunday morning newspaper published in the City of Pittsburgh, Pennsylvania, and also operates at Pittsburgh, Pennsylvania, through its

subsidiary WCAE, Incorporated, radio station WCAE. These enterprises have no connection with either the manufacture, publication, sale or distribution of said "Los Angeles Examiner" and are wholly independent thereof;

D. The Times Publishing Company, incorporated in Michigan on October 14, 1921, which corporation publishes "Detroit Times," a daily evening and Sunday morning newspaper published in the City of Detroit, Michigan. This enterprise has no connection with either the manufacture, publication, sale or distribution of said "Los Angeles Examiner," and is wholly independent thereof.

All of the capital stock of Hearst Publications, Incorporated, is owned by Hearst Consolidated Publications, Inc., a corporation organized in the State of Delaware on May 9, 1930, and all of the common stock of Hearst Consolidated Publications, Inc., is owned by The Hearst Corporation, a corporation organized under the laws of the State of Delaware on August 25, 1931, and all of the stock of The Hearst Corporation is owned by American Newspapers, Inc., a corporation organized under the laws of the State of Delaware on July 13, 1920, and all of the common capital stock of American Newspapers, Inc., is held by Clarence J. Shearn of New York City, New York, the Trustee under Voting Trust Agreement dated as of June 27, 1937, William Randolph Hearst, beneficial owner. Hearst Consolidated Publications, Inc., The Hearst Corporation, and American Newspapers, Inc., have various

subsidiaries engaged in the publishing and other businesses in various states of the United States. That no one of said corporations or subsidiaries in this paragraph mentioned (except Hearst Publications, Incorporated) has any connection or relation with either the manufacture, publication, sale or distribution of said "Los Angeles Examiner" and are each wholly independent thereof other than by related stock ownership as herein indicated.

2. Los Angeles Examiner uses the wire reports of International News Service, Associated Press and Dow-Jones Financial Service, which, in many instances, embrace news sent from without the State of California. Approximately 39,000 words of general news are received daily by the Los Angeles Examiner over the Associated Press day wire, of which the Los Angeles Examiner uses less than 5%. Approximately 75,000 words of general news are received daily by the Los Angeles Examiner over the Associated Press night wire, of which the Los Angeles Examiner uses approximately 30%. Approximately 34,000 words of general news are received daily by the Los Angeles Examiner over the International News Service day wire, of which the Los Angeles Examiner uses less than 5%. Approximately 34,000 words of general news are received daily by the Los Angeles Examiner over the International News Service night wire, of which the Los Angeles Examiner uses approximately 60%. A total of approximately 16,000 words of sports news is received daily by the Los Angeles

Examiner over the Associated Press day and night wires, of which approximately 50% is used. (It is estimated that during the baseball season approximately 75% of said news is used.) A total of approximately 10,800 words of sports news is received daily by the Los Angeles Examiner over the International News Service day and night wires, of which approximately 70% to 80% is used. A total of approximately 30,000 words of financial news is received daily by the Los Angeles Examiner over the Associated Press and International News Service day and night wires, of which from 75% to 80% is used. A total of from 27,000 to 30,000 words is received daily by the Los Angeles Examiner from the Dow-Jones Financial Service, of which approximately 10% are used. All of these wire services have Los Angeles coverage of their own. To some wire services the Los Angeles Examiner gives the local news collected by it, and to other wire services it does not—it depends upon the contract with the wire service, but to at least one wire service that is engaged in interstate transmission of news the Los Angeles Examiner gives the news collected by its own organization. Photographs which are taken by Los Angeles Examiner photographers are made available to one of the photographic services to which it subscribes, which photographic service also has its own Los Angeles coverage.

3. Los Angeles Examiner is distributed throughout the State of California, but principally in the metropolitan area of Los Angeles, and, according to its last Audit Bureau of Circulation figures, has

a daily (exclusive of Sunday) average circulation of 213,460 copies, only 3,743 copies of which are sold or distributed outside the State of California, the balance being sold and distributed wholly within the State of California. In other words, only 2% of its daily (exclusive of Sunday) circulation is sold and distributed outside the State of California, while 98% of said circulation is sold and distributed wholly within the State of California. It has a Sunday average circulation of 566,175 copies, only 46,901 copies of which are sold or distributed outside the State of California. In other words, only 8% of its Sunday average circulation is sold and distributed outside the State of California, while 92% of said circulation is sold and distributed wholly within the State of California. It has a combined daily and Sunday average circulation of 263,848 copies, only 9,909 copies of which are sold or distributed outside the State of California, the balance being sold and distributed wholly within the State of California. In other words, only 4% of its daily and Sunday circulation is sold and distributed outside the State of California while 96% of said circulation is sold and distributed wholly within the State of California.

4. Principal raw materials used in the printing of the Los Angeles Examiner are newsprint, mats, and ink. During the year 1939, all of the newsprint was received from the States of Washington, Oregon, and the Dominion of Canada, and consisted of 31,470 tons. During said period all mats were received from the State of New York and con-

sisted of 51,100 in number. The ink used is manufactured in the State of California, and for such period consisted of 1,065,581 pounds.

5. Said Los Angeles Examiner during the year 1939 received and published approximately 58 feature services, the material for many of which was prepared and originated in states other than the State of California.

6. During the year 1939 an average of 32 per cent of the space in the daily (exclusive of Sunday) issues of said Los Angeles Examiner was devoted to advertising, and an average of 48 per cent of the space in the Sunday issues of said Los Angeles Examiner was devoted to advertising. During the year 1939, 89.67 per cent of the advertising contained in the said Los Angeles Examiner wholly originated from within the State of California, and 10.33 per cent of said advertising, during said period, originated from without the State of California.

Dated at Los Angeles, California, this 24 day of June, 1940.

FRANK A. MOURITSEN,

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Counsel for the Board.

LAWLER, FELIX & HALL,
A. LAURENCE MITCHELL,
By JOHN M. HALL,

Counsel for Hearst Publications, Incorporated (Los Angeles Examiner Department)

United States of America
Before the National Labor Relations Board

Case No. R-1923

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Case No. R-1924

In the Matter of HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Case No. R-1925

In the Matter of TIMES MIRROR CO. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Case No. R-1926

In the Matter of HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

Mr. Frank A. Mouritsen, for the Board.

Mr. L. B. Binford and Mr. Howard M. Binford, of Los Angeles, Calif., for the News.

Flint and McKay, by Mr. Edward L. Compton and Mr. Donald W. Hamblin, of Los Angeles, Calif., for the Herald.

Cosgrove & O'Neil, by Mr. T. B. Cosgrove and Mr. F. B. Yoakum, Jr., of Los Angeles, Calif., for the Times.

Lawler, Felix & Hall and A. L. Mitchell, by Mr. John M. Hall and Mr. Marcus Matson, of Los Angeles, Calif., for the Examiner.

Mr. Pat Commorre, Mr. Roy Eley, and Gallagher, Wirin & Johnson, of Los Angeles, Calif., for the Union.

Mr. Eugene R. Thorrens, of counsel to the Board.

DECISION AND DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

On various dates, hereinafter mentioned, Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., herein called the Union, filed with the Regional Director for the Twenty-first Region (Los Angeles, California), petitions alleging that questions affecting commerce had arisen concerning representation of employees of Stockholders Publishing Company, Inc., Los Angeles, California, herein called the News, Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) Los Angeles, California, herein called the Herald, Hearst Publications, Incorporated (Los Angeles Examiner Department) Los Angeles, California, herein called the Examiner, and The Times-

Mirror Company,[1] Los Angeles, California, herein called the Times,[2] and requesting investigations and certifications of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.[3] By orders entered July 31, 1939, March 27, 1940, and June 5, 1940, the National Labor Relations Board, herein called the Board, acting pursuant to Section 9 (c) of the

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[1]Designated in the notice of hearing herein as "Times Mirror Co."

[2]All four are herein together called the Companies.

[3]The Union filed its petitions relating to the cases involving the News and the Herald, being Cases Nos. R-1923 and R-1924, respectively, on April 21, 1939. On June 16, 1939, and June 8, 1940, it filed an amended and a second amended petition, respectively, in Case No. R-1923. At the hearing on June 18, 1940, counsel for the Board and counsel for the News entered into a stipulation with respect to the meaning of terms describing the appropriate unit contained in the petition as amended in Case No. R-1923 and the Union further amended its petition in that case to conform to the stipulation. On February 7, 1940, and on June 10, 1940, the Union filed an amended and a second amended petition, respectively, in Case No. R-1924, and at the hearing, on June 14, 1940, counsel for the Board and counsel for the Herald entered into a written stipulation with respect to the meaning of terms describing the appropriate unit contained in the petition as amended in Case No. R-1924. The Union filed its petition with respect to the case involving the Times, being Case No. R-1925, on March 21, 1940. On June 7, 1940, it filed an amended petition in Case No. R-1925. The Union filed its petition with respect to the case involving the Examiner, being Case No.

Act and Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 2, as amended, ordered an investigation in each case and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice. By orders entered March 27, 1940, and June 5, 1940, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 10 (c) (2), of said Rules and Regulations—Series 2, as amended, directed that the 4 cases be consolidated.

Each of the Companies filed motions to dismiss the petitions accompanied by answers.[4] In substance, these pleadings asserted that the Companies' activities did not affect commerce and that the newsboys whom the Union sought to represent were not employees within the meaning of the Act. In ad-

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R-1926, on May 18, 1940. During the course of the hearing on June 22, 1940, the Union moved to amend its petitions in Cases Nos. R-1925 and R-1926 with respect to the allegations concerning the appropriate unit and the Trial Examiner reserved his rulings upon the motions for the consideration of the Board. The motions are hereby granted.

[4]The Trial Examiner granted the Companies' applications to have their respective motions to dismiss and answers stand as to the petitions as amended during the course of the hearing. The Trial Examiner was not requested by any of the parties to rule on the motions to dismiss and the Trial Examiner made no rulings thereon. For the reasons hereinafter indicated, the motions to dismiss are hereby denied.

dition, each of the Companies alleged that the unit sought by the Union in each case, respectively, was inappropriate.

On June 5, 1940, the Regional Director issued a notice of hearing, copies of which were duly served upon the Companies and the Union. Pursuant to the notice, a hearing was held at Los Angeles, California, from June 10, 1940, to June 27, 1940, inclusive, before Thomas H. Kennedy, the Trial Examiner duly designated by the Board. The Board and the Companies were represented by counsel. The Union appeared by representatives. All participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

The Union and the Companies have filed briefs which have been considered by the Board. None of the parties requested the privilege of oral argument and none was held.

After the hearing, counsel for the Board, and counsel for the Companies entered into a stipulation, dated September 26 and October 1, 1940, for correction of errors in the transcript of the testimony and, on October 4, 1940, the Board issued its order making the stipulation a part of the record.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

1. The business of the Companies[5]

A. Stockholders Publishing Company, Inc.

Stockholders Publishing Company, Inc., a Nevada corporation, having its principal place of business in Los Angeles, California, is engaged in the publication, distribution, and sale of a daily (except Sunday) newspaper, "The News."[6] The principal raw materials used in the printing of the News consists of newsprint, mats, ink, and photographic supplies. During the year 1939, all the newsprint, costing approximately $470,000, and all the mats, costing approximately $4800, were obtained outside the State of California. During the same period, all the ink, costing approximately $16,000, and most of the photographic supplies, costing approximately $3600, were purchased within the State of California. The daily average circulation of the News for March 1940 was 195,725 copies, 534 of which were circulated and distributed outside the State of California.

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[5]The facts related in this section are set forth in written stipulations signed by each of the Companies and introduced in evidence.

[6]About April 1, 1940, the News combined "The Daily News," the morning edition, and "The Evening News," and thus established a 24-hour publication under a single name, "The News."

The News uses the wire reports of United Press which furnishes news sent from outside the State of California. It uses daily approximately 27,000 words obtained from this wire service. In 1939 the News published 13 feature services which it received from service houses located outside the State of California.

During 1939, 9,909,000 lines of space was devoted to local, national, and classified advertising. Of this advertising space, 1,500,000 lines were devoted to national advertising.

B. Hearst Publications, Incorporated

1. Los Angeles Evening Herald & Express

Hearst Publications, Incorporated, is a California corporation with its principal office and place of business in San Francisco, California. It is engaged in the publication of various daily and Sunday newspapers, including the Los Angeles Evening Herald & Express.[7]

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[7]In addition to the Herald, Hearst Publications, Incorporated, operates five other newspapers (Los Angeles Examiner, San Francisco Examiner, San Francisco Call-Bulletin, Oakland Post-Enquirer, and Seattle Post-Intelligencer) and owns stock in the following subsidiaries: (1) American Weekly, Inc., a New York corporation which publishes "The American Weekly," a Sunday magazine and comic section which is a supplement and part of various Sunday newspapers published in cities throughout the United States; (2) Illinois Publishing and Printing Company, an Illinois corporation, which publishes the "Chicago Herald-American"; (3) Pitt Publishing Company, a Pennsylvania corporation, which publishes the "Pittsburgh Sun-Tele-

The Herald is an evening paper published daily except Sunday at its plant in Los Angeles[8] and distributed throughout the State of California, principally in the metropolitan area of Los Angeles. Its daily circulation averages 243,022 copies, of which approximately 37 hundreds of 1 per cent or 903 copies are sold and distributed outside the State of California.

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graph" and operates through its subsidiary, WCAE, Incorporated, radio station WCAE; and (4) The Times Publishing Company, a Michigan corporation, which publishes "Detroit Times." Hearst Publications, Inc. is a wholly owned subsidiary of Hearst Consolidated Publications, Inc., a Delaware corporation, all of the common stock of which is owned by The Hearst Corporation, a Delaware corporation, a wholly owned subsidiary of American Newspapers, Inc., a Delaware corporation. Clarence J. Shearn, as voting trustee, holds the legal title to all the common stock of American Newspapers, Inc., for the benefit of William Randolph Hearst. Hearst Consolidated Publications, Inc., The Hearst Corporation, and American Newspapers, Inc. have various subsidiaries engaged in the publishing and other businesses in various parts of the United States. Cf. Matter of William Randolph Hearst, Hearst Publications, Inc., Hearst Consolidated Publications, Inc., Hearst Corporation, American Newspapers, Inc. and King Features Syndicate, Inc. and American Newspaper Guild, Seattle Chapter, 2 N.L.R.B. 530, enf'd as mod., National Labor Relations Board v. Hearst, 102 F. (2d) 658 (C.C.A. 9).

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[8]This plant is exclusively devoted to the publication and distribution of the Herald and is operated independently of other papers published by Hearst Publications, Incorporated.

The principal raw materials used in the printing of the Herald include newsprint, mats, and ink. During the year 1939, all the newsprint, consisting of 18,915 tons, was obtained from the States of Washington and Oregon and the Dominion of Canada. During the same period, all the mats, numbering 60,700, were obtained from the State of New York. The ink used, amounting to 664,408 pounds, was manufactured in the State of California.

The Herald uses the wire reports of the International News Service,[9] the Associated Press,[10] the United Press,[11] and the Dow-Jones Financial Service. It uses daily approximately 332,000 words received from these services. The Herald supplies at least one wire service engaged in the interstate transmission of news with local news which the Herald has collected. In 1939 the Herald received and published approximately 40 feature services,

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[9]For a description of the business of International News Service, see Matter of William Randolph Hearst, et al. and American Newspaper Guild, Seattle Chapter, 2 N.L.R.B. 530, enf'd as mod., National Labor Relations Board v. Hearst, 102 F. (2d) 658 (C.C.A. 9).

[10]For a description of the Nation-wide business of the Associated Press, see Matter of The Associated Press and American Newspaper Guild, 1 N.L.R.B. 788, enf'd, National Labor Relations Board v. Associated Press, 85 F. (2d) 56 (C.C.A. 2), 301 U.S. 103.

[11]For a description of the business of the United Press, see Matter of United Press Associations and American Newspaper Guild, 3 N.L.R.B. 344.

the material for many of which was prepared and originated in States other than the State of California.

During the year 1939, an average of 39 per cent of the space in the Herald was devoted to advertising. Of this advertising space, 84 per cent contained advertising originating in the State of California while the remainder, 16 per cent, contained advertising originating outside the State of California.

2. Los Angeles Examiner[12]

As we noted above, Hearst Publications, Incorporated, also publishes the Los Angeles Examiner. The Examiner is a morning newspaper published daily, including Sunday, at its plant in Los Angeles, California.[13] It has a daily[14] average circulation of approximately 213,460 copies and a Sunday circulation of approximately 566,175 copies. It is distributed throughout the State of California, principally in the metropolitan area of Los Angeles. Of the daily circulation, approximately 2 per cent or 3,743 copies are sold and distributed outside the State of California. Of the Sunday

[12]See Matter of Hearst Publications, Incorporated (Los Angeles Examiner Department) and Newspaper Circulators, Wholesale Distributors and Miscellaneous Employees Union No. 21666, American Federation of Labor, 25 N.L.R.B., No. 74.

[13]This plant is devoted exclusively to the publication of the Examiner and is operated independently of other Hearst papers.

[14]Exclusive of Sunday.

edition, approximately 8 per cent or 46,091 copies are sold and distributed outside the State of California.

The principal raw materials used in printing the Examiner include newsprint, mats, and ink. During the year 1939, all the newsprint, consisting of 31,470 tons, was obtained from the States of Washington and Oregon and the Dominion of Canada. During the same period, all the mats, numbering 51,100, were obtained from the State of New York. The ink used, amounting to 1,065,581 pounds, was manufactured in the State of California.

The Examiner uses International News Service, Associated Press, and Dow-Jones Financial Service wire reports. It uses daily approximately 88,750 words obtained from these services. The Examiner supplies at least one wire service engaged in the interstate transmission of news with local news which the Examiner has collected. In 1939 the Examiner received and published approximately 58 feature services, the material for many of which was prepared and originated in States other than that State of California.

During the year 1939 an average of 32 per cent of the space in the daily and 48 per cent of the Sunday issues of the Examiner were devoted to advertising. Of this advertising space, 89.67 per cent contained advertising originating in the State of California while the remainder, 10.33 per cent, contained advertising originating outside the State of California.

C. The Times-Mirror Company

The Times-Mirror Company, a California corporation, having its principal place of business in Los Angeles, California, is engaged in the publication, distribution, and sale of "The Los Angeles Times," a morning newspaper, published daily including Sunday, at its plant in Los Angeles. During the year 1939 the Times had an average daily circulation of 220,266 copies and a Sunday circulation of 367,814 copies. It is distributed throughout the State of California, principally in the metropolitan area of Los Angeles. Of the average daily circulation, approximately 1.7 per cent or 3,935 copies were sold during the year 1939 outside the State of California. Of the Sunday edition, approximately 2.5 per cent or 9,197 copies were sold during the same period outside the State of California.

The principal raw materials used in printing the Times include newsprint, mats, and ink. During the year 1939, all the newsprint, having a value of $2,086,870.12, was purchased outside the State of California. During the same period, all the mats, having a value of $6,909.00, were purchased outside the State of California. The ink used, having a value of $99,476.85, was purchased in the State of California.

The Times uses the wire reports of the Associated Press, the United Press, and Dow-Jones Financial News Service. In addition, it receives wire service from the Chicago Tribune and the New

York News, and obtains photographs from Wide World Photos and the Associated Press. The Times supplies news gathered and assembled by it to the Associated Press. In 1939, The Times received from national syndicates and published at least 10 feature services, among the more prominent being Walter Lippman, Westbrook Pegler, and American Institute of Public Opinion (Gallup Poll).

During the year 1939, an average of 39.9 per cent of the space in the Times was devoted to advertising. Of this advertising space, 14.1 per cent contained national advertising.

II. The organization involved

Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership all persons in the metropolitan area of Los Angeles employed in the general distribution and sale of newspapers, magazines, and periodicals, except those who have the power to hire and discharge.

III. Status of the newsboys involved in this proceeding.

The Union seeks in this proceeding to obtain from the Board certification as collective bargaining representative of persons who engage in the street sale of newspapers published by the Companies. As we have noted above, the Companies resist the Union's petitions contending, inter alia, that the relationship between each of the Companies and the newsboys

who sell their respective publications is that of vendor and vendee, that the newsboys are not employees within the meaning of the Act, and thus are not entitled to its protection. We pass to a consideration of that issue.

Circulation managers of the respective Companies control the general execution of their policies relating to newspaper distribution. The metropolitan area of Los Angeles, the territory in which the newspapers are generally distributed, is divided for administrative purposes into specific geographical districts, and district managers assigned by the circulation manager to assist in the circulation and distribution of the newspaper in these districts control the execution of the Companies' policy with respect to newspaper circulation and distribution within such districts.[15]

Each district manager works in an assigned geographical area, varying in mileage, within which he is authorized to distribute the newspaper published by his company. He receives for his services a fixed

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[15]In the Herald organization, placed between the circulation manager and the district managers are four branch managers who have charge of circulation and distribution in a number of districts and who immediately supervise the work of the district managers. In the Times organization, a supervisor of street sales, who stands in a position similar to the Herald branch manager, superintends all Times' district managers. In the Examiner organization, the P.M. street sales manager is the counterpart of the Times supervisor of street sales. The record does not disclose whether a comparable position exists in the News organization.

salary or a guaranteed minimum plus commissions. His name is carried on the company pay roll, and, admittedly, he is an employee of the publisher.[16] Each district manager obtains newspapers for purposes of distribution at the publisher's plant, travels throughout his district and delivers the newspapers or directs company-employed truck drivers to haul the newspapers, wrapped in bundles and addressed to specific newsboys, in trucks provided by the publisher. The newspapers are delivered to newsboys, who sell them to the public, or are delivered to so-called checkmen[17] stationed at important corners or spots who redistribute the newspapers to newsboys stationed at neighboring corners or spots of lesser importance.[18] For his services in redistributing newspapers the checkman receives a small salary from the publisher. He is carried on the publisher's payroll. At least to the extent of such services, he is admittedly an employee of the publisher. In addition to such wholesaling activities, the checkman sells newspapers to the public and, in

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[16]See, also, Matter of Hearst Publications, Incorporated (Los Angeles Examiner Department) and Newspaper Circulators, Wholesaler Distributors and Miscellaneous Employees Union No. 21666, American Federation of Labor, 25 N.L.R.B., No. 74, where, in a complaint proceeding, the Board found that Examiner district managers were employees of that publication.

[17]Sometimes the checkmen are referred to as "main-spot" while the other newsboys are called "off-spot" boys or men.

[18]The Times does not employ such checkmen.

all other respects, he occupies a position similar to that of the ordinary newsboy.

The publisher makes a charge against the district manager for each newspaper that he takes from the plant. Likewise the district manager enters a charge, which is set by the publisher,[19] against the newsboy or the checkman, as the case may be, for each newspaper delivered to him, and the checkman charges the newsboy an amount equal to the sum charged the checkman by the district manager. At the end of the selling period, the newsboys settle with the district manage or the checkman, as the case may be, the checkmen settle with the district manager, and the district manager accounts to his superior for the newspapers. Except in a residential section under the supervision of A. W. Brewster, Herald branch manager, the newsboys are permitted by each of the Companies to return all unsold copies and receive credit for them.[20] The price of each of the news-

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[19]Except in the case of the News, where the publisher permits the district manager to determine the amount charged by him.

[20]Newsboys selling the Herald in Brewster's territory do not receive credit for newspapers delivered to them as part of a so-called established or "standing" order. The established order is determined by "experience" with reference to the number of papers normally sold at a given corner or spot. Even in Brewster's territory, the newsboys receive full credit for all newspapers delivered to them by

papers to the public is set by the respective Companies and is printed on the masthead. The newsboys retain for themselves as earnings the difference between the amount they pay the publisher for the newspaper and the sum they receive for it from the public.[21]

Although Herald supervisors, including Circulation Manager William J. Harrison and branch manager A. W. Brewster testified that newsboys have the "right" to determine the number of newspapers to be included in their established order, it is undenied that the district managers unilaterally determine the number of "extra" papers, in excess of the established order, which the newsboys must attempt to sell. Moreover, in practice the newsboys cannot determine the size of their established order without the cooperation of the district manager. Thus, Arthur Steuart testified that daily regulation of the size of his established order was impossible since "the district man tells me that it takes too much trouble in his bookkeeping." In such situations, the newsboys' privilege is limited to a reallo-

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the district manager in excess of the established order remaining unsold. In certain instances, Herald district managers have given the newsboys partial credit for unsold copies.

[21]Prior to the fall of 1935, the Times paid Edward Patch, a Times newsboy, a weekly bonus, which he received in the form of a Times check, in addition to the differential retained by newsboys. Since the fall of 1935 when the Times discontinued the bonus payments, there has been no substantial change in the Times mode of operation in the circulation of its newspaper with respect to Patch.

cation of his order with respect to the number of papers of a given edition without changing the total number of papers in the established order for the day. Several other instances, moreover, reveal that the newsboy often has no voice in the determination of the established order.[22] The experience of Sam Kahn, a checkman for the Herald and for the News, is illustrative. On cross-examination by counsel for the Herald, Kahn testified, in part, as follows:

> Q. Now, do your put in every day to your district man a standing order for papers?
>
> A. No, sir. . .
>
> . . . . . .
>
> Q. Well, will you explain then how you buy the papers that you obtain, that is, the Herald and Express?
>
> A. It isn't that I buy it. I have to take what they give me.
>
> Q. You mean that you don't indicate in any respect how many papers you want from day to day?
>
> A. No, sir. Well, sometimes if the papers are going good I will ask for an increase; but I get an increase at times regardless of whether they are going good or not, especially during this time, during the war crisis.

[22] Circulation Manager Harrison admitted in his testimony that the newsboys are permitted to increase their orders "within reasonable limitations" and that the Herald often unilaterally lowers the established order to prevent excessive returns.

Q. Well, prior to the war crisis, didn't you tell your district man from time to time how many papers you wanted?

A. No, sir.

Q. You mean you have nothing to do with the number of papers that are delivered to you?

A. No, sir.

* * * * * * *

Q. Do you supply papers to other boys on that corner?

A. Yes, sir.

Q. Do you supply any particular number on any given day to them?

A. Well, not exactly. I just know how many they sell and I give them that many.

Q. Do they tell you how many they want?

A. No, sir.

Q. You give them the number that from past experience you know they can sell, is that it?

A. Yes, sir.

Q. And you endeavor to sell the rest yourself?

A. . . . . I do . . . . .

Celestino Sanchez, Grover C. Nixon, and Harry L. Buhl, Examiner newsboys, gave similar testimony with reference to the distribution of the Examiner establishing that the district managers determine the number of papers delivered to those newsboys. Shortly prior to the hearing when the Times changed its press time from 5 to 6 o'clock Roy Eley's "order" was reallocated without his request

by the Times' district manager with the result that Eley received the same number of papers in one delivery that he formerly got in two.

The newsboy customarily obtains his corner or spot by making application at the plant of the publisher where he consults a district manager. The applicant usually inquires whether there is a corner or spot "open." If an opening exists, the district manager escorts the newsboy to the corner or spot and furnishes him with newspapers or directs him to a checkman who shows the newsboy his territory and furnishes him with newspapers. Thus, Harry Plotkin, Herald district manager, testified that he "hire" (d) all the newsboys in his district who "work(ed) under" the checkman and that on such occasions it was his practice to send the successful applicant to see "the (check) man in charge there . . . (who) will put (him) to work . . . and supply him with papers. . . ." Sidney Glen Murray, News district manager, stated in his testimony that applicants "come to me for a job and if they like it, why, to keep it and if they don't, I will have to look up somebody else. . . ." In reply to an inquiry at the hearing as to whether he ever placed newsboys on corners, Julius J. Cohen, superintendent of street sales for the Times, disclosed that "boys have come in and asked for corners and I have asked the district men if they have any corners open." In recent months preceding the hearing, William H. Seebolt, Examiner district manager, placed newsboys on spots in the downtown area where the Examiner "didn't have

. . . . anybody then to sell," and Gilbert Navarro and Nicholas Volanty, Examiner night district managers, admitted in their testimony that they placed newsboys on corners in their respective districts.

Not only do the district managers of the Companies allocate corners and spots, they also issue detailed directions as to specific places within the newsboy's allotted territory in which to engage in selling activities, particularly with reference to standing in street traffic and covering business establishments where large numbers of people congregate. District Manager Plotkin of the Herald instructed Sam Kahn, a checkman, to "always play that safety zone and get out into traffic." Although Kahn finds that he can sell more newspapers while stationed on his corner, he regularly patrols the safety zone in the street in compliance with Plotkin's order. Ivan Moore, News district manager, told James V. Apice, a News checkman, to instruct a newsboy to whom Apice distributed papers to sell in the safety zone "for such time as was necessary." Thomas McKinney, Times district manager, did not deny that he gave the following instructions to Roy Eley, a Times newsboy, when he first began selling papers. Eley related that

> (McKinney) counted out a certain number of papers. . . . he told me that there was one of those that was not to be charged to me, that I should leave it at the drug store in the market, and at the same time I should go up to the liquor store just above there, where there

was a certain sale, and over to the little restaurant where there was another certain sale, and then come back to the corner, to work through the market, and get out on the traffic line, in the traffic.

When Frank Curtis, Times' district manager, transferred newsboy Roberts from his original place to a spot across the street where a "drive-in-stand" was located, Roberts was instructed by Curtis ". . . to work traffic and cover this drive-in-stand . . . You have got to watch them cars in there every ten or fifteen minutes and make the stands and work your traffic as much as possible. . . . Now, it's all right to go in this stand and go in the bar there and flash your papers, but do not blast your headline or anything like that. . . . The management objects to that but . . . hold your paper up and give the customers a chance to see the paper. Don't cause any disturbance. . . . Go right back to your safety zone." When Ernie Latham first began selling the Examiner, William Jackson, Examiner district manager, took Latham to his corner, told him to "watch" the corner, to "work" the market located nearby, and to "work the white (traffic) lines" in the street. On another occasion, Jackson told Latham, who then operated as a checkman, to instruct an off-spot boy to whom he supplied papers "to work in the safety zone."

The Companies furnish boxes, racks, change aprons, and placards advertising special features contained in the newspapers, bearing the name of

the publisher. To facilitate the work of the newsboy and to increase circulation, according to the testimony of several newsboys, the district managers distribute such equipment and advertising matter to the newsboys with instructions to keep the newspapers in the boxes or the racks and to display the advertising matter on posts, fire plugs, or other vantage points.[23]

Generally the newsboy is required to be at his post from the time the newspapers customarily appear on the street to the time settlement is made.[24] Instances are found in the record where the district manager definitely fixed the newsboy's hours. Ed Bryant, a newsboy who sells the Herald, the News, and the Examiner, testified that he understood that the hours of the Herald and of the News were from 9 to 7 and that he received such information from Joe Woods, Herald district manager, and two or three unnamed Examiner district managers, who told him "what time the editions came out . . . (on) the streets." Questioned by the Trial Examiner, Bryant, a witness called by the Herald, admitted that he was not his own "boss" because he could not "open . . . and close" whenever he

[23]In some instances this is not denied. In others, district managers implicated by the newsboys' testimony, deny giving such instructions and say that the newsboys know what to do with the boxes, racks, and advertising material without instructions.

[24]When the publisher plans to issue an "extra," district managers notify the newsboys who are expected to attend their locations on such occasions either before or after the usual selling period.

wished and had "to work specified hours." Although Joe Woods appeared as a witness, he did not testify with respect to this aspect of the case. Isaiah J. Moore, News district manager, stated in his testimony that he worked from 10:20 in the morning until 6:15 at night; that he had "ten all-day boys that work all day" and 20 to 30 boys who work after school "for" him; that the 10 newsboys sell from the time that he arrives on the street with the first edition of the paper to the time that he "leaves at night" when he collects from the newsboys; and that "the schoolboys work from approximately 3:30 to 7 o'clock." When Lou Law, News district manager, assigned Frank B. Smith to a corner at Fifth and Los Angeles in December 1939 or January 1940, he was instructed by Law to "be there between 4:30 and 5 in the morning, . . . work until 10 and check in. . . ." John F. Fields, Times newsboy, testified that at the time he "first started" he was instructed by Bill Moore, Times district manager, to report at the Times concourse at 4:30 daily (except Saturday and Sunday), 2 o'clock on Saturday, and 3 o'clock on Sunday, and to "check in" when Moore appeared at approximately 1 a. m. Bill Moore was not a witness.

When Thomas McKinney, Times district manager, assigned Roy Eley, a Times newsboy, to an off-spot at Fletcher and San Fernando, he was instructed by McKinney, among other things, "to work until 11 o'clock." Eley appeared daily at the Times concourse to report to McKinney before

proceeding to his spot. Customarily McKinney and other Times district managers transport by automobile Times newsboys from the Times concourse, where they report to sell newspapers, to spots within their districts.[25] Harry L. Buhl, an Examiner newsboy, testified that he was instructed by Abe Pierce, Examiner district manager, to be at his (Buhl's) location at 6 p. m. although the papers do not ordinarily reach his corner until 6:45 or 7 o'clock, and to "check in" at the Belmont Grill where Pierce appeared at 1 a. m. Pierce was a witness but he did not deny Buhl's testimony.

The record is replete with instances in which district managers have removed, permanently or temporarily, newsboys from their corners or transferred them from one location to another, for various reasons. About Christmas 1937 Harry Gish, a newsboy, was removed from his spot by Joe Woods, Herald district manager, who received recurring complaints concerning Gish's personal uncleanliness from the manager of a business establishment located near Gish's spot who threatentd to appeal to the local health authorities. Gish was never restored to his spot. Woods admits this. Joe Roth, a 73-year-old newsvendor, testified that he was "fired" twice by

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[25]Times district managers pay 12 newsboys a small sum each week for providing transportation for other newsboys and the Times makes an allowance to the district manager to cover this expense.

Woods.[26] Shortly prior to January 1939, Woods removed Roth because of his record for excessive returns of unsold newspapers. After Roth lodged a grievance with the Union, Woods restored Roth to his corner. Shortly after January 1939, Woods found Roth selling the Herald for 4 cents. Woods warned: "You can't sell those papers for 4 cents. The price is 5 cents. If I find out you do that again, I'll fire you." Thereafter, Roth observed the established retail price of a nickel. Woods testified both before and after Roth gave his testimony. At first Woods stated that he "never fired anyone." When Woods testified later, at the instance of the Herald, he was not interrogated with respect to Roth. We do not therefore credit Woods' general denial. In October or November 1938, James V. Apice, a newsboy, was removed from his corner by George E. Hutchinson, Herald district manager. When Apice appealed to the Herald downtown office, a Mr. Neal, who is not further identified in the record, informed Apice that he was "fired" because the Herald had received a complaint from an outraged father to the effect that Apice had made indecent remarks to a young girl. Friendly businessmen circulated a petition in Apice's behalf and presented it to the Herald. After an investigation of the matter, in which Apice was cleared, Neal told Apice to return to work, and he resumed selling at his corner after a 4-day en-

[26] As hereinafter appears, apparently Roth meant that Woods threatened discharge on one of the two occasions.

forced absence. This is not denied. Lou Law, News district manager, transferred Edward V. Smith, a newsboy, from one corner to another on December 4, 1939. Law designated the new corner and told Smith that there would be a man there to show Smith where to sell. When he reported to the new corner, a man there showed Smith his territory. Law did not testify, and the record does not disclose the reason for the transfer. Likewise, Roy Eley, a Times newsboy, was transferred from a location in Glendale, California, to another spot by Times' district manager, Thomas McKinney, to enable McKinney to assign to the Glendale spot another newsboy who operated an automobile and who could provide transportation for other Times newsboys traveling from the Times concourse to locations en route to Glendale. Shortly prior to Christmas 1938, Frank Curtis, Times district manager, removed permanently John A. Roberts, a Times newsboy, from his spot when Curtis decided that Roberts disposed of an insufficient number of newspapers to warrant his retention. According to Roberts, Curtis stated: "Roberts, I can't use you any more; I am going to have to put somebody on there that will hustle that spot. I have got so many papers to sell and I have got to put somebody on there that will work it better than you are." Curtis was not a witness. In September 1939, Nick Volanty[27] removed Charles Seklemian from his spot and later reinstated him.

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[27]Volanty described himself in the record as a P. M. street manager for the Examiner.

According to the latter's testimony, Seklemian was told by Volanty that he had received a telephone call at the office of the Examiner from an operator of a beer garden in Seklemian's territory who stated that he would bar Seklemian from the beer garden since he wore a Bridges or C. I. O. button. Seklemian further testified that he was chided by Volanty for not concealing such buttons, that Volanty stated that Seklemian's sales had been declining, and that Volanty informed Seklemian that "the office was sending out another hustler" as a substitute at a cost of $4.50 for the night. As a result, the next night Seklemian did not sell papers. The following night, however, he persuaded Volanty to change his mind and obtained reinstatement. In his testimony Volanty denied generally that he ever paid a newsboy any amount to substitute for Seklemian; otherwise, he failed to testify about the button incident or Seklemian's removal. We find that Seklemian was removed from his corner and subsequently reinstated under circumstances substantially as related above by him.

The record also contains evidence with respect to the extent of the Companies' supervision over the conduct of the newsboys while they are engaged in selling newspapers on the street. While the Companies assert that their relation to a newsboy who "buys" his papers from the publisher and who "pays" cash for them is strictly that of seller and buyer, yet the diligence of the newsboys is closely observed by the circulation department. Thus Harry

Plotkin, Herald district manager, admitted in his testimony that it was part of his duties to "go around and see that . . . the newsboys . . . are working" and that the checkman's duties consisted, in part, in seeing that the newsboys, who receive newspapers from checkmen, "are out there working." Darrell Cole, who described himself as a circulation representative for the Examiner, testified that it was part of his duties to check the conduct of street sales by traveling through the districts and observing whether the newsboys were stationed at their corners selling the Examiner. He testified that if he found a newsboy absent from his post, he waited until the newsboy returned, noted the length of the period elapsing between the time of his own arrival at the corner and the time of the newsboy's return, and submitted a written report to his superior, Arthur Hampson, Examiner supervisor of night street sales.[28] The supervisor or the investigator transmits the complaints to the district manager who brings the matter to the attention of the offending newsboy with the view of remedying the situation in the future.[29] About 6 to 9 months before the hearing,

[28]In addition to Cole, the Examiner employs two others who, like Cole, perform similar services.

[29]At the hearing Hampson denied that he ever made use of Cole's reports to discipline a newsboy. He admitted, however, that he had no knowledge whether district managers disciplined newsboys as the result of Cole's reports and he was not interrogated with respect to the use he made of information gained from the reports of the Examiner's two other investigators. We do not credit Hampson's testimony.

Herald district manager, Louis K. France, showed Arthur Steuart, a Herald checkman, a yellow slip of paper, containing various reports, which purported to show, among other things, that neither newsboy or newspapers could be found on Steuart's corner one night at 8:58 p. m. Steuart was told by France that he obtained the slip from a "spotter" who drives through the district and checks the corners; and France instructed Steuart to keep his corner "covered" thereafter until 9 p. m. On one occasion when William Jackson, Examiner district manager, found Ernie Latham, an Examiner newsboy, sitting on a fire plug and holding one remaining copy of an early edition of the Examiner, Jackson inquired why Latham was not working, stated that "the office would be on (him) if they (caught Latham) sitting down," and told Latham ". . . . to get out there and sell those papers." On another occasion, Jackson arrived at Latham's location while he was eating his lunch in the corner drug store. When Latham's object in visiting the drug store was learned by Jackson, he told Latham to "get a sandwich and stay outside on the corner."

In April 1939, Harry Plotkin, Herald district manager, notified Sam Kahn, a checkman, of a 2-or 3-day lay-off. When Kahn asked for an explanation, Plotkin stated: Bill Abels[30] . . . . the checker, came by and told me to lay you off because you weren't on your corner . . . hustling." Harry

[30]Assistant to Jake Gratz, Herald branch manager and Plotkin's immediate superior.

Relis, who sold the News, found it necessary to absent himself from his corner during an unstated period once or twice a week for 2 to 3 hours at a time. During these intervals he had another newsboy cover his spot. Martinez, News district manager, called Relis' attention to his absences, saying: "You know that you have to stay on this corner all the time because we want to sell papers." Martinez was not a witness. Times district manager Curtis reprimanded newsboy Roberts because he stopped trying to sell papers during a rainfall, and as we noted above, Curtis discharged Roberts the next day for not hustling.

As a general practice, the newsboys sell more than one newspaper and handle magazines.[31] In certain instances, however, the Companies have objected to the newsboys' handling competing publications. Herald district manager France warned Arthur Steuart to quit selling the People's World, the Hollywood Tribune, the Sports Weekly, and Ham and Eggs because that practice "was not allowed by the Herald" and instructed Steuart to

[31]Joe Woods, Herald district manager, supplies most of these magazines, including the Saturday Evening Post and Liberty, to the newsboys. The newsboys return to Woods all unsold copies for credit, and retain for themselves the difference between the price they receive from the purchaser and the amount charged for each magazine by Woods. Although Woods handles the magazines as a side line business in which the Herald has no direct financial interest or control, he engages in such business with the permission of William J. Harrison, Herald circulation manager.

handle only such publications as were "authorized" by the Herald. Prior to November 1, 1937, when the Herald and News instituted a joint distribution plan for the street sale of their newspapers, France told Steuart not to handle the News himself and instructed him to refuse to serve customers who asked for the News in the absence of the newsboy who sold that publication on the same corner. Likewise, Abie Peters,[32] Examiner district manager, instructed Ernie Latham not to handle the Times and Bill Moore, Times district manager, directed Phillip Tellis and John F. Fields not to sell the Examiner.

By arrangement, instituted about November 1, 1937, between the Herald and the News, substantially the same set of newsboys sell both newspapers although they are supplied with the papers by separate district managers representing each publication. The publishers of these newspapers have agreed as to the manner in which the newsboys shall hold and display the respective papers. In accordance with that agreement, district managers of the News and the Herald have instructed the newsboys to hold the Herald, a paper larger in size than the News, on the inside, and the News on the outside in order to insure display of the masthead of each newspaper in such manner as to be visible to the public eye. The agreement also provided that the newsboys specify both newspa-

[32] Whether this is the same person as Alfie Pierce, Examiner district manager, is not clear from the record.

pers by name in their cry. A News district manager instructed one of the newsboys to hold up both newspapers or none but not to display one and not the other in such manner. District Manager Plotkin of the Herald disclosed in his testimony that the newsboys have "had" to display the newspaper prominently by holding it up in the air or, in the parlance of the trade, to "pitch that sheet."

Since its organization, the Union has presented on various occasions grievances to the Companies and has made various efforts to negotiate terms and conditions of employment for the newsboys. The Companies have dealt with union representatives with respect to such grievances, but, as we hereinafter point out, the Companies have refused to negotiate a contract with the Union.

On the basis of the foregoing, we are of the opinion that the Companies have the right to exercise, and do exercise, such control and direction over the manner and means in which the newsboys perform their selling activities as establishes the relationship of employer and employee for the purposes of the Act.[33] Through the district managers, who are authorized to act as the publishers' repre-

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[33]Section 2 (3) of the Act provides in part: "When used in this Act - (3) The term "employee" shall include any employee . . . . . " In cases where the status of an individual was challenged, we have indicated that the statutory definition of the term "employee" embraces all employees in the conventional as well as legal sense, except those by express provision excluded and that the primary

sentatives in the circulation and distribution of their newspapers, the Companies hire the newsboys by the allotment of corners and spots, thus providing them with a place to work, furnish company-owned equipment and paraphernalia to facilitate newspaper sales, and require the newsboys' attendance at their posts and attention to their work, within customary limits, during relatively definite hours. Moreover, the Companies control the number of papers delivered to the newsboys for the purpose of sale, limit their earnings by the establishment of a fixed "wholesale" and retail price for the newspaper, afford them a return privilege for unsold papers with the exceptions hereinabove noted, and supervise the newsboys' selling activities as to such details of performance as the manner of calling, holding, and displaying the newspaper, and place of its sale within the allotted territory. Furthermore, the Companies at will discharge the newsboys, transfer them to other locations, and lay them off as disciplinary measures. The newsboy is not free to sell where he will; he must operate in a certain area under company-imposed conditions; if he does not succeed in selling, he will be dis-

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consideration in the determination of the applicability of the statutory definition is whether effectuation of the declared policy and purposes of the Act comprehend securing to the individual the rights guaranteed and protection afforded by the Act. See, for example, Matter of Seattle Post-Intelligencer Department of Hearst Publications, Inc. and Seattle Newspaper Guild, Local 82, 9 N.L.R.B. 1262.

missed. Since the relationship contemplates services of an indefinite duration terminable at the will of either party, the newsboy has no vested interest in the newspaper business. Although he is not carried on the Companies' pay rolls, the newsboy is an integral part of the Companies' distribution system and circulation organization.

The Companies urge that the nature of the control exercised by the Companies and acquiesced in by the newsboys is that incidental to the control exercised by any seller of a commodity who may impose conditions as a part of the terms of sale and who has the privilege to refuse to sell at his caprice. We are not persuaded by that contention. The method by which the newsboys are compensated for their services is a convenient accounting device employed by the Companies to measure the earnings of the newsboys and to provide an incentive for increased newspaper circulation. While the newsboys absorb losses resulting from poor credit risks, this indicates no more than that they, like sales agents in other fields, are not authorized by the Companies to extend credit in the sale of newspapers. Nor is the fact that the newsboys generally sell competing publications with the knowledge and acquiescence of the Companies inconsistent with the newsboys' status as employees.[34] The simultaneous

[34]Some newsboys occasionally hire others to sell newspapers on a commission, or straight stipend, basis. Such employment by a newsboy under the circumstanes disclosed in this record does not affect his own relationship with the Companies.

existence of the employer-employee relationship between an employee and two or more competing employers is not uncommon, especially where compensation is dependent upon and measured by sales. Finally, counsel for the Companies cite California and other local decisions establishing the status of newsboys as independent contractors with respect to the publisher's liability in tort and workmen's compensation proceedings. We do not herein pass upon the nature of the relationship for other purposes, but hold upon this record that the newsboys here involved are within the definition of employees as the term is used in this Act. Accordingly, we find that the newsboys involved in this proceeding are employees within the meaning of Section 2 (3) of the Act.

IV. The question concerning representation

Shortly prior to the filing of the petitions, the Companies were requested by the Union to recognize it as collective bargaining representative of their respective newsboys. The Companies refused to enter into collective bargaining negotiations with the Union prior to determination of the employee status of the newsboys. We find that questions have arisen concerning the representation of employees of the Companies.

V. The effect of the questions concerning representation upon commerce

We find that the questions concerning representation which have arisen, occurring in connection

with the operations of the Companies described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. The appropriate units

The petitions, as amended, allege that the following units are appropriate: (1) all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers,[35] temporary, casual,[36] and part-time newsboys; (2) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys; (3) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys; and (4) all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys. At the hearing counsel for the Union and counsel for the Herald and

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[35]A bootjacker is a newsboy who sells to the general public at places other than established corners or spots.

[36]The terms "temporary" and "casual" are used synonymously and they are here intended to have their ordinary meaning.

for the News entered into stipulations with respect to the meaning of the terms contained in the petitions as amended describing the alleged appropriate units in Cases Nos. R-1923 and R-1924.

Thus defined, with respect to the Herald, the term "full-time" newsboy includes a newsboy who sells to the general public all editions,[37] or all except the first edition, of the Herald 5 or more days a week, and excludes, among others, part-time newsboys; the term "part-time" newsboy includes a newsboy who sells to the general public less than six editions of the Herald a day, excluding full-time newsboys as defined above.

With respect to the News, the term "full-time" newsboy includes a newsboy who sells to the general public the fifth and subsequent editions of the News, except the seventh,[38] 5 or more days a week, and excludes, among others, part-time newsboys; the term "part-time" newsboy includes a newsboy who sells to the general public less than five editions of the News a day.

According to the allegations of the petitions, as amended, in Cases Nos. R-1925 and R-1926, the term "established spot," as used in those petitions, refers to a place where a newsboy has engaged in the street sale of the Times or the Examiner, as the

[37]The Herald publishes six editions each day of publication.

[38]The News publishes 10 editions each day of publication. The first, second and third, and seventh editions of the News are reserved for motor routes and suburban dealers and are not sold on the streets of Los Angeles.

case may be, 5 or more days a week for a period of 6 consecutive months or more, and the term "temporary" newsboy, as used in those petitions, includes a newsboy who has engaged in the street sale of the Times or the Examiner, as the case may be, at an established spot for 30 days or less.

Although the Companies circulate and distribute their newspapers in suburban areas outside Los Angeles, the Union has organized only the newsboys who sell newspapers within Los Angeles, except in the case of the Times. In addition to the newsboys selling the Times within Los Angeles, the Union has organized the newsboys selling the Times in Glendale, California, a suburb of Los Angeles.[39] All newsboys engaged in the selling of newspapers in the metropolitan area of Los Angeles are eligible to membership in the Union.

Each of the Companies contends that the unit sought by the Union in its respective case is inappropriate because newsboys,[40] having interests similar to those whom the Union seeks to represent as exclusive bargaining representative, are excluded. The Union desires to exclude bootjackers, temporary, and part-time newsboys since they consist

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[39]The Times also circulates and distributes its newspaper in suburbs other than Glendale, California.

[40]Including temporary and part-time newsboys, bootjackers, and newsboys engaged in street sales outside Los Angeles in the case of the Herald, News, and Examiner, and outside Los Angeles and Glendale in the case of the Times.

largely of schoolboys who do not depend upon the vending of newspapers for a livelihood and because of the irregularity of their employment. Similarly the Union does not desire to include in the unit the suburban newsboys, other than the Times newsboys in Glendale, California, because organization has not as yet been extended to the suburban group generally. Since those whom the Union desires to be included in the unit are, in general, mature individuals who daily rely upon their earnings from the street vending of newspapers as their source of support, since the Union is the only labor organization existing among the newsboys, and because union organization has not at present extended to suburban newsboys other than the Times newsboys in Glendale, California, we find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining: (a) All full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys; (b) All full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys; (c) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys; and (d) all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours

a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys. We further find that said units will insure to employees of the Companies the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

VII. The determination of representatives

At the hearing lists prepared by the Herald, the News, and the Times were introduced in evidence purporting to show the following approximate current number of newsboys employed by each of these companies:

Herald	219[41]
News	110[42]
Times	627[43]

The Examiner furnished no comparable list; however, Arthur J. Hampson, Examiner P. M. street sales manager, testified that approximately 500[44] newsboys handle the Examiner in territory

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[41]This number includes full-time newsboys and checkmen. The record does not disclose whether it includes temporary newsboys.

[42]This number refers to checkmen and does not include ordinary newsboys. The News did not furnish a list of full-time newsboys.

[43]This number includes temporary and part-time newsboys and newsboys engaged in street sales in suburbs outside Los Angeles and Glendale, California.

[44]This number refers to those Examiner newsboys in the unit we have found to be appropriate.

covered by night district managers who operate under his supervision.

The Union presented figures which differ widely from those offered by the Times and the Examiner. Pat Commorre, union organizer and Roy Eley, chaiman of the Union's Labor Board Committee, testified that they conducted a personal check to ascertain the number of newsboys within the approximate units. According to the testimony of Commorre or Eley, they found approximately 210[45] full-time Herald newsboys including approximately 110 checkmen; approximately 114 full-time News newsboys,[46] approximately 292 full-time Times newsboys,[47] and approximately 339 full-time Examiner newsboys.[48]

At the hearing the Trial Examiner made statements concerning the claim of representation made by the Union. These statements reveal that the names of at least 121, 66, and 76 newsboys, Herald, News, and Times, respectively, found on the lists mentioned above, appear on signed authorization cards bearing dates between February 28, 1940, and

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[45]The record does not disclose whether this number includes or excludes temporary newsboys.

[46]The record does not disclose whether this number includes or excludes temporary newsboys.

[47]This number includes an unstated number of temporary newsboys.

[48]This number includes an unstated number of temporary newsboys.

June 19, 1940.[49] The Union tendered 222 authorization cards purporting to be signed by Examiner newsboys. Since that Company furnished no list of its newsboys, the Trial Examiner made no statement concerning the claim of representation made by the Union with respect to the Examiner newsboys. Under these circumstances, we find that the questions of representation which have arisen can best be resolved in elections by secret ballot. We shall accordingly direct that such elections be held. All newsboys in the appropriate units employed by any of the Companies on the date of the Direction of Elections herein, including newsboys who did not work on said date because they were ill or on vacation, and newsboys who were then or shall have since been temporarily laid off, but excluding those who shall have since quit or been discharged for cause, shall be eligible to vote. Newsboys employed by two or more of the Companies within appropriate units shall be entitled to vote in two or more elections as the case may be.

Upon the basis of the above findings of fact and upon the entire record in the cases, the Board makes the following:

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[49]The Companies objected to the introduction of the Trial Examiner's statements on various grounds. They were received, however, as part of the Board's investigation of the substantiality of the Union's claim and not as a basis for certification upon the record.

Conclusions of Law

1. Questions affecting commerce have arisen concerning the representation of employees of the Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The following employees of Stockholders Publishing Company, Inc., Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), The Times-Mirror Company, and Hearst Publications, Incorporated (Los Angeles Examiner Department), all of Los Angeles, California, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: (a) all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys; (b) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys; (c) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys; and (d) all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys.

Direction of Elections

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Section 8, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining, elections by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of this Direction of Elections, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the employees of the Companies within the groups described below who were employed by any of the Companies on the date of this Direction of Elections, including employees who did not work on said date because they were ill or on vacation, and employees who were then or shall have since been temporarily laid off, and excluding employees who shall have since quit or been discharged for cause:

(a) All full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) All full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(c) All newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys; and

(d) All newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys; to determine whether or not said employees desire to be represented by Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., for the purposes of collective bargaining.

Signed at Washington, D. C., this 9 day of Jan, 1941.

HARRY A. MILLIS,
Chairman.

EDWIN S. SMITH,
Member.

WM. M. LEISERSON,
Member.

[Seal] NATIONAL LABOR
RELATIONS BOARD.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

AFFIDAVIT AS TO SERVICE.

District of Columbia, ss:

I, John S. Lamb, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 9th day of January 1941, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Direction of Elections to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union No. 75,
Att: Pat Comorre and Roy Eley,
Room 304, 212 W. 3rd St.,
Los Angeles, Calif.

Gallagher, Wirin & Johnson,
257 S. Spring St.,
Los Angeles, Calif.

Stockholders Publishing Company,
12 & Los Angeles St.,
Los Angeles, Calif.

L. B. Binford and Howard M. Binford,
606 S. Hill St.,
Los Angeles, Calif.

Hearst Publications Incorporated,
1243 Trenton St.,
Los Angeles, Calif.
Flint and McKay,
Att: Edward L. Compton & Donald W. Hamblin,
458 S. Spring St.,
Los Angeles, Calif.
Hearst Publications,
410 Hearst Bldg.,
San Francisco, Calif.
Lawler, Felix and Hall,
Att: John M. Hall, Marcus Matson & A. L. Mitchell,
605 W. Tenth St.,
Los Angeles, Calif.
Times Mirror Company.
Second & Spring,
Los Angeles, Calif.
Cosgrove & O'Neil,
Att: T. B. Cosgrove & F. B. Yoakum, Jr.,
458 S. Spring St.,
Los Angeles, Calif.

/s/ JOHN J. LAMB.

Subscribed and sworn to before me this 9th day of January 1941.

[Seal] /s/ JOHN A. NEVROS
Notary Public, D. C. My Commission Expires Aug. 15, 1943.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

AMENDMENT TO DECISION AND DIRECTION OF ELECTIONS

On January 9, 1941, the National Labor Relations Board issued a Decision and Direction of Elections in the above-entitled proceeding.[1]

In Section VI of the Decision, a stipulation with respect to (1) the definition of full-time newsboys of Stockholders Publishing Company, Inc., engaged in the sale of the News, and (2) the sale of the first three editions of the News within the city of Los Angeles, was erroneously stated. Accordingly,

It is hereby ordered that the Decision be, and the same hereby is, amended by striking therefrom the third paragraph of Section VI of the Decision (appearing on page 17 of the original Decision) and substituting therefor, as a separate paragraph, the following:

> With respect to the News, the term "full-time" newsboy includes a newsboy who sells to the general public, the Five, Six, Eight, Nine, and Ten Star, or the Six, Eight, Nine, and Ten Star editions of the News 5 or more days a week and includes a newsboy who sells the Four Star edition, and previous editions.

[1] 28 N.L.R.B., No. 151.

of the News for a minimum of 4 hours per day between the hours of 4 a. m. and 10 a. m. 5 or more days a week,[38] and excludes, among others, part-time newsboys; the term "part-time" newsboy includes a newsboy who sells to the general public fewer than the Six, Eight, Nine, and Ten Star editions per day and includes a newsboy who sells the Four Star edition of the News less than 4 hours per day.

It is further ordered that the Decision be, and the same hereby is, amended by striking therefrom footnote numbered 38 and substituting therefore, as footnote 38, the following:

[38]The News publishes 10 editions each day of publication. The first, second, third, and seventh editions of the News are generally reserved for motor routes and suburban dealers and, with certain exceptions as to the first 3 editions, are not sold on the streets of Los Angeles.

Signed at Washington, D. C., this 18 day of January 1941.

HARRY A. MILLIS,
Chairman.
EDWIN S. SMITH,
Member.
WM. M. LEISERSON,
Member.

[Seal] NATIONAL LABOR RELATIONS BOARD.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

AFFIDAVIT AS TO SERVICE

District of Columbia—ss.

I John Lamb, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 18th day of January 1941, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Amendment to Decision and Direction of Elections to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union No. 75,
Att: Pat Comorre and Roy Eley,
Room 304, 212 W. 23rd St.,
Los Angeles, Calif.

Gallagher, Wirin & Johnson,
257 S. Spring St.,
Los Angeles, Calif.

Stockholders Publishing Company,
12 & Los Angeles,
Los Angeles, Calif.

L. B. Binford and Howard M. Binford,
606 S. Hill St.,
Los Angeles, Calif.

Hearst Publications Incorporated,
1243 Trenton St.,
Los Angeles, Calif.
Flint and McKay,
Att: Edward L. Compton & Donald W. Hamblin,
458 S. Spring St.,
Los Angeles, Calif.
Hearst Publications,
410 Hearst Bldg.,
San Francisco, Calif.
Lawler, Felix & Hall,
Att: John M. Hall, Marcus Matson and A. L. Mitchell,
605 W. Tenth St.,
Los Angeles, Calif.
Times Mirror Co.,
Second & Spring,
Los Angeles, Calif.
Cosgrove & O'Neil
Att: T. B. Cosgrove & F. B. Yoakum, Jr.,
458 S. Spring St.,
Los Angeles, Calif.

/s/ JOHN LAMB.

Subscribed and sworn to before me this 18th day of January 1941.

[Seal] /s/ JOHN A. NEVROS

Notary Public, D. C. My Commission Expires Aug. 15, 1943.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

SECOND AMENDMENT TO DIRECTION OF ELECTIONS

On January 9, 1941, the National Labor Relations Board, herein called the Board, issued its Decision and Direction of Elections in the above-entitled proceedings,[1] directing that elections be held within thirty (30) days from the date of the said Direction of Elections under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California). The Board, having been advised by the Regional Director that a longer period within which to hold the elections was necessary, hereby amends the Direction of Elections by striking therefrom the words "not later than thirty (30) days from the date of this Direction of Elections," and substituting therefor the words "not later than sixty (60) days from the date of this Direction of Elections."

Signed at Washington, D. C., this 31 day of Jan., 1941.

HARRY A. MILLIS,
Chairman.
EDWIN S. SMITH,
Member.

[1] 28 N. L. R. B., No. 151.

WM. M. LEISERSON,
Member.

(Seal) NATIONAL LABOR RELATIONS BOARD

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

AFFIDAVIT AS TO SERVICE

District of Columbia—ss.

I, John Lamb, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 31st day of January 1941, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Second Amendment to Direction of Elections to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.
Att: Pat Comorre and Roy Eley,
Room 304, 212 W. 3rd St.,
Los Angeles, California.

Gallagher, Wirin & Johnson,
257 South Spring Street,
Los Angeles, California.

Stockholders Publishing Company,
12 & Los Angeles St.
Los Angeles, California.
L. B. Binford and Howard M. Binford,
606 S. Hill St.,
Los Angeles, California.
Hearst Publications, Incorporated,
1243 Trenton Street,
Los Angeles, California.
Flint and McKay,
Att: Mr. Edward L. Compton and Mr. Donald W. Hamblin,
458 S. Spring Street,
Los Angeles, California.
Hearst Publications,
410 Hearst Building,
San Francisco, California.
Lawler, Felix and Hall,
Att: John M. Hall, Marcus Matson, and A. L. Mitchell,
605 W. Tenth Street,
Los Angeles, California.
Times Mirror Co.,
2nd & Spring,
Los Angeles, California.
Cosgrave & O'Neil,
Att: T. B. Cosgrave & F. B. Yoakum, Jr.,
458 S. Spring St.
Los Angeles, California.

/s/ JOHN LAMB

Subscribed and sworn to before me this 31st day of January 1941

[Seal] JOHN A. NEVROS,
Notary Public, D. C.

My commission expires Aug. 15, 1943.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

ORDER DENYING MOTION

The Board having issued a Decision and Direction of Elections on January 9, 1941, and an Amendment to Decision and Direction of Elections on January 18, 1941, and a Second Amendment to Direction of Elections on January 31, 1941, and, thereafter, on March 17, 1941, Stockholders Publishing Company, Inc., having filed a "Motion of Stockholders Publishing Company, Inc., to Reopen Proceedings (and for Modification of Decision)," and the Board having duly considered the matter,

It Is Hereby Ordered that the said Motion be, and it hereby is, denied.

Dated, Washington, D. C., March 21, 1941.

By direction of the Board:

BEATRICE M. STERN,
Acting Secretary.

[Title of Board and Cause.]

Case No. R-1924

STIPULATION

It Is Hereby Stipulated and Agreed by and between Hearst Publications, Incorporated, (Los Angeles Evening Herald & Express Department) by its counsel, Flint & MacKay, by Edward L. Compton, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., by its representatives, and, National Labor Relations Board by William R. Walsh, its attorney, that

Whereas, the National Labor Relations Board in its original Decision and Direction of Elections in Part 6, Page 17, paragraph 1 thereof, defined the term newsboys as relates to the Los Angeles Herald & Express, which definition is predicated upon the record in these proceedings, and, particularly upon Board's Exhibit 8, and

Whereas, the said Decision and Direction of Elections and record, and particularly Board's Exhibit 8 does not clearly define the term newsboys as applies to the Los Angeles Herald & Express,

Now, Therefore, It Is Hereby Stipulated and Agreed by and between the parties hereto, that the Board may amend its original Decision and Direction of Elections by striking from Part VI, paragraph (1) thereof, the first paragraph on page 17 thereof purporting to define "full time" and "part time" newsboys engaged in selling the Los Angeles Evening Herald and Express and substituting therefor the following:

"Thus defined with respect to the Los Angeles Evening Herald and Express, the term "full time" newsboy means a newsboy who regularly sells to the public five or more editions a day five or more days a week: The term "part time" newsboy means a newsboy who sells to the public less than five editions a day or who sells to the public all or any of the daily editions published by the Los Angeles Evening Herald and Express less than five days a week."

It Is Further Stipulated and Agreed by and between the parties hereto that the Hearst Publications, Incorporated, (Los Angeles Evening Herald & Express Department) does not waive any of the objections heretofore made to the jurisdiction of the National Labor Relations Board over the Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) in so far as the said National Labor Relations Act relates to newsboys heretofore referred to or any of them.

It Is Further Stipulated that the Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), by entering into this Stipulation does not admit, consent or agree that the newsboys above referred to, or any of them, are employees of the Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) within the purview of the National Labor Relations Act or otherwise.

Dated at Los Angeles, California, this 29 day of March, 1941.

HEARST PUBLICATIONS, INCORPORATED, (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT)
FLINT & MacKAY,
By EDWARD L. COMPTON,
Attorney
LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.,
By PAT COMORRE 4/1/41

.....

WILLIAM R. WALSH,
Attorney, National Labor Relations Board.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

THIRD AMENDMENT TO DIRECTION OF ELECTIONS

On January 9, 1941, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Elections in the above-entitled proceedings,[1] the elections to be held not later than

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[1] 28 N. L. R. B., No. 151.

thirty (30) days from the date of the Direction of Elections, under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California). On January 18, 1941, the Board issued an Amendment to Direction of Elections.[2] On January 31, 1941, the Board issued a Second Amendment to Direction of Elections,[3] providing that the elections should be held within sixty (60) days from the date of the Direction of Elections instead of within thirty (30) days therefrom.

The Board, at the request of the Regional Director, hereby amends the Direction of Elections, as amended, by striking therefrom the words "not later than sixty (60) days from the date of this Direction of Elections" and substituting therefor the words "not later than ninety (90) days from the date of this Direction of Elections."

Signed at Washington, D. C., this 29 day of Mar., 1941.

HARRY A. MILLIS,
Chairman
EDWIN S. SMITH,
Member
WM. M. LEISERSON
Member
NATIONAL LABOR RELATIONS BOARD.

[Seal]

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[2] 29 N. L. R. B., No. 16.

[3] 29 N. L. R. B., No. 16a.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, John Lamb, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 29th day of March 1941, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Third Amendment to Direction of Elections to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union No. 75, C I O
Pat Comorre and Roy Eley,
Rm. 304, 212 W. Third St.,
Los Angeles, Calif.

Gallagher, Wirin & Johnson,
257 South Spring St.,
Los Angeles, Calif.

Stockholders Publishing Company,
12th and Los Angeles St.,
Los Angeles, Calif.

L. B. Binford and Howard M. Binford,
606 S. Hill St.,
Los Angeles, Calif.

Hearst Publications, Inc.,
1243 Trenton St.,
Los Angeles, Calif.
Flint and McKay,
Att: Mr. Edward L. Compton, Mr. Donald W. Hamblin,
458 S. Spring St.,
Los Angeles, Calif.
Hearst Publications,
410 Hearst Bldg.,
San Francisco, Calif.
Lawler, Felix and Hall,
Att: John M. Hall, Marcus Matson, A. L. Mitchell,
605 W. Tenth St.,
Los Angeles, Calif.
Times Mirror Co.,
2nd & Spring,
Los Angeles, Calif.
Cosgrave & O'Neil,
Att: T. B. Cosgrave, F. B. Yoakum, Jr.,
458 S. Spring St.,
Los Angeles, Calif.

JOHN LAMB

Subscribed and sworn to before me this 29th day of March 1941.

(Seal) IRVING HELBLING

My commission expires Sept. 2, 1945.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

FOURTH AMENDMENT TO DECISION AND DIRECTION OF ELECTIONS

On January 9, 1941, the National Labor Relations Board, herein called the Board, issued its Decision and Direction of Elections in the above-entitled proceeding,[1] directing that elections be held within thirty (30) days from the date of the said Direction of Elections, under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California). On January 18, 1941, the Board issued an Amendment to Direction of Elections.[2] On January 31, 1941, the Board issued a Second Amendment to Direction of Elections.[3] On March 29, 1941, the Board issued a Third Amendment to Direction of Elections,[4] providing that the elections should be held within ninety (90) days from the date of the Direction of Elections.

The Board, having entered into a stipulation, dated March 29, 1941, with Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and Los Angeles Newsboys Lo-

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[1] 28 N. L. R. B., No. 51.
[2] 29 N. L. R. B., No. 16.
[3] 29 N. L. R. B., No. 16a.
[4] 30 N. L. R. B., No. 110.

cal Industrial Union No. 75, C. I. O., providing, inter alia, as follows:

> It Is Hereby Stipulated and Agreed by and between the parties hereto, that the Board may amend its original Decision and Direction of Elections by striking from Part VI, paragraph (1) thereof, the first paragraph on page 17 thereof purporting to define "full time" and "part time" newsboys engaged in selling the Los Angeles Evening Herald and Express and substituting therefor the following:
>
> > Thus defined with respect to the Los Angeles Evening Herald and Express, the term "full time" newsboys means a newsboy who regularly sells to the public five or more editions a day five or more days a week: The term "part time" newsboy means a newsboy who sells to the public less than five editions a day or who sells to the public all or any of the daily editions published by the Los Angeles Evening Herald and Express less than five days a week.

The Board, having entered into a stipulation, dated March 29, 1941, with Stockholders' Publishing Company, Inc., and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., providing, inter alia, as follows:

> Whereas, the National Labor Relations Board by its Amendment to the Decision and Direction of Elections dated January 18, 1941,

amended its original Decision and Direction of Elections by striking therefrom the third paragraph of Section 6 of the Decision and Direction of Elections (appearing on Page 17 of the original Decision and Direction of Elections) and substituting therefor a separate paragraph which reads as follows:

> With respect to the News, the term "full time newsboy includes a newsboy who sells to the general public, the Five, Six, Eight, Nine, and Ten Star, or the Six, Eight, Nine, and Ten Star editions of the News 5 or more days a week and includes a newsboy who sells the Four Star edition, and previous editions of the News for a minimum of 4 hours per day between the hours of 4 a. m. and 10 a. m. 5 or more days a week, (footnote) and excludes, among others, part-time newsboys; the term "part time" newsboy includes a newsboy who sells to the general public fewer than the Six, Eight, Nine, and Ten Star editions per day and includes a newsboy who sells the Four Star Edition of the News less than 4 hours per day.

and

Whereas, the Amendment to the Decision and Direction of Elections does not accurately describe the terms therein purported to be described,

Now, Therefore, It Is Hereby Stipulated and

Agreed by and between the parties hereto that the National Labor Relations Board may further amend its Decision and Direction of Elections by striking the paragraph above-quoted from the Amendment to the Decision and Direction of Elections and substituting therefor the following:

> With respect to the News, the term "full-time" newsboy means a newsboy who sells to the general public Five, Six, Eight, Nine and Ten Star editions, or Six, Eight, Nine and Ten Star editions of the News, 5 or more days a week, and means a newsboy who sells the Four Star edition and previous editions of the News for a minimum of four hours per day between the hours of 4 o'clock a. m. and 10 o'clock a. m., five or more days a week.

and,

The Board, having been advised by the Regional Director that a longer period within which to hold the elections is necessary,

It Is Hereby Ordered that said stipulations be, and they hereby are, made a part of the record in this proceeding;

It Is Further Ordered that the Decision, as amended, be, and the same hereby is, amended by striking therefrom the second paragraph of Section VI of the Decision (appearing on page 17 of the original decision) and substituting therefor, as a separate paragraph, the following:

> Thus defined with respect to the Los Angeles Evening Herald and Express, the term "full-

time" newsboy means a newsboy who regularly sells to the public five or more editions a day five or more days a week: The term "part time" newsboy means a newsboy who sells to the public less than five editions a day or who sells to the public all or any of the daily editions published by the Los Angeles Evening Herald and Express less than five days a week.

It Is Further Ordered that the Decision, as amended, be, and the same hereby is, amended by striking therefrom the third paragraph of Section VI of the Decision (appearing on page 17 of the original decision) and substituting therefor, as a separate paragraph, the following:

With respect to the News, the term "full-time" newsboy means a newsboy who sells to the general public Five, Six, Eight, Nine and Ten Star editions, or Six, Eight, Nine and Ten Star editions of the News, 5 or more days a week, and means a newsboy who sells the Four Star edition and previous editions of the News for a minimum of four hours per day between the hours of 4 o'clock a. m. and 10 o'clock a. m., five or more days a week.

It Is Further Ordered that the Direction of Elections, as amended, be, and the same hereby is, amended by striking therefrom the words "not later than ninety (90) days from the date of this Direction of Elections," and substituting therefor the words "not later than one hundred

and twenty (120) days from the date of this Direction of Elections."

Signed at Washington, D. C., this 12 day of April 1941.

HARRY A. MILLIS,
Chairman
EDWIN S. SMITH,
Member
WM. M. LEISERSON,
Member
NATIONAL LABOR RELATIONS BOARD
(Seal)

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Virgil Daniels, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 12th day of April, 1941, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Fourth Amendment to Decision and Direction of Elections to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.,
Att: Pat Comorre and Roy Eley,
Room No. 304,
212 West 3rd Street,
Los Angeles, California.

Gallagher, Wirin & Johnson,
257 South Spring Street,
Los Angeles, California.

Stockholders Publishing Company,
12th and Los Angeles Street,
Los Angeles, California.

L. B. Binford and Howard M. Binford,
606 South Hill Street,
Los Angeles, California.

Hearst Publications, Incorporated,
1243 Trenton Street,
Los Angeles, California.

Flint & McKay,
Att: Edward L. Compton and Donald W. Hamblin,
458 South Spring Street,
Los Angeles, California.

Hearst Publications,
410 Hearst Building,
San Francisco, California.

Lawler, Felix and Hall,
Att: John M. Hall, Marcus Matson, and A. L. Mitchell
605 West 10th Street,
Los Angeles, California.

Times Mirror Company,
2nd and Spring Street,
Los Angeles, California.
Cosgrove & O'Neil,
Att: T. B. Cosgrove and F. B. Yoakum, Jr.,
458 South Spring Street,
Los Angeles, California.

/s/ VIRGIL DANIELS

Subscribed and sworn to before me this 12th day of April, 1941.

(Seal) IRVING HELBLING

My commission expires Sept. 2, 1945.

[Title of Board and Causes.]

Cases Nos. R-1923
R-1924
R-1925
R-1926

FIFTH AMENDMENT TO DIRECTION OF ELECTIONS

On January 9, 1941, the National Labor Relations Board, herein called the Board, issued its Decision and Direction of Elections in the above-entitled proceeding,[1] and thereafter issued various amendments thereto.[2]

The Board, having been advised by the Regional

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[1] 28 N. L. R. B., No. 51.

[2] 29 N. L. R. B., No. 16; 29 N. L. R. B., No. 16a; 30 N. L. R. B., No. 110; 30 N. L. R. B., No. 110a.

Director that a longer period within which to hold the elections is necessary, hereby amends the Direction of Elections, as amended, by striking therefrom the words "not later than one hundred and twenty (120) days from the date of this Direction of Elections" and substituting therefor the words "not later than one hundred and thirty-five (135) days from the date of this Direction of Elections."

Signed at Washington, D. C., this 9 day of May 1941.

HARRY A. MILLIS,
Chairman
EDWIN S. SMITH,
Member
WM. M. LEISERSON,
Member
NATIONAL LABOR RELATIONS BOARD

[Seal]

[Title of Board and Causes.]

AFFIDAVIT AS TO SERVICE

Cases Nos. R-1923
R-1924
R-1925
R-1926

District of Columbia, ss:

I, John Lamb, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 9th day of May

1941, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Fifth Amendment to Direction of Elections to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.,
Att: Pat Comorre and Roy Eley,
Room 304, 212 W. 3rd Street,
Los Angeles, Calif.

Gallagher, Wirin & Johnson,
257 South Spring St.,
Los Angeles, Calif.

Stockholders Publishing Company,
12 & Los Angeles St.,
Los Angeles, Calif.

L. B. Binford and Howard M. Binford,
606 S. Hill St.,
Los Angeles, Calif.

Hearst Publications, Inc.,
1243 Trenton St.,
Los Angeles, Calif.

Flint and McKay,
Att: Mr. Edward L. Compton and Mr. Donald W. Hamblin,
458 S. Spring St.
Los Angeles, Calif.

Hearst Publications,
410 Hearst Bldg.,
San Francisco, Calif.

Lawler, Felix and Hall,
Att: John M. Hall, Marcus Matson, and A. L. Mitchell,
605 W. Tenth St.,
Los Angeles, Calif.
Times Mirror Co.,
2nd & Spring,
Los Angeles, Calif.
Cosgrove & O'Neil,
Att: T. B. Cosgrove and F. B. Yoakum, Jr.
458 S. Spring St.
Los Angeles, Calif.

/s/ JOHN LAMB

Subscribed and sworn to before me this 9th day of May, 1941.

[Seal] IRVING HELBLING

My commission expires Sept. 2, 1945.

DAILY NEWS
Los Angeles, California

May. 12, 1941.

National Labor Relations Board,
Twenty-first Region,
Federal Bldg.,
Los Angeles, Calif.

Re Case No. R-1923

Stockholders Publishing Company, Inc.
Respondent.

Gentlemen:

Comes now, Stockholders Publishing Company, Inc., and hereby challenges collectively and sev-

erally, all votes of all newsboys which may be cast at the election called by the National Labor Relations Board to be held on the 14th day of May, 1941, between the hours of 10 o'clock a. m., and 4:00 o'clock p. m., and 7:00 o'clock p. m. and 10:00 o'clock p. m., upon the following grounds:

(a) That the National Labor Relations Board never has had nor does it now have, jurisdiction to order said election or to proceed under Section 9 or any other section of the National Labor Relations Act.

(b) That no newsboy, either within or without the "appropriate unit" as defined by the National Labor Relations Board is an employee of respondent as a newsboy.

(c) That the National Labor Relations Board is without jurisdiction to hold said election.

Yours very truly,
STOCK HOLDERS PUBLISHING COMPANY, INC.
By /s/ R. L. SMITH
ROBERT L. SMITH
Executive Vice-President

RLS:mn

Copy

[Title of Board and Cause.]

Case No. XXI-R-1062
Consolidated with XXI-R-927
XXI-R-928, and XXI-R-1084

OBJECTIONS TO VALIDITY OF DIRECTION OF ELECTIONS AND EXCEPTIONS TO THE SAME; BLANKET OBJECTION TO THE BALLOT OF EACH AND EVERY PERSON PARTICIPATING IN SAID ELECTIONS (TIMES UNIT)

Comes now The Times Mirror Co., a corporation, and appearing specially, files this, its blanket objection to the votes and ballots of all persons whose names appear on lists prepared under the direction of the acting regional director and to the votes and ballots of all other persons who may vote in the election heretofore on January 9, 1941, directed herein; and said The Times Mirror Co. objects to the validity of said Direction of Elections and excepts to said Direction of Elections and to the election to be held thereunder. Said objections and exceptions are based on each and all of the following grounds:

1. The relationship between The Times Mirror Co. and said voters (the newsboys engaged in the street sale of Los Angeles Times within Los Angeles and Glendale, California) is not subject to the jurisdiction of the National Labor Relations Board.

2. Each and all of said voters (the newsboys engaged in the street sale of Los Angeles Times

within Los Angeles and Glendale, California) is and are independent contractors.

3. No question affecting commerce has arisen or can arise concerning the representation of said voters in their relationship with The Times Mirror Co.

4. The National Labor Relations Board has no jurisdiction over The Times Mirror Co. or the business conducted by it.

5. The relations of The Times Mirror Co. with said voters are not subject to the jurisdiction of the National Labor Relations Board.

6. No claimed labor dispute between The Times Mirror Co. and said voters can affect commerce within the meaning of the National Labor Relations Act.

The Times Mirror Co. reserves the right to make individual challenges to the vote and/or ballot of each newsboy in said election other than objections going to the validity of the Direction of Elections and the assertion of any such challenge shall not constitute a waiver of these objections and exceptions.

Dated, May 9th, 1941.

COSGROVE & O'NEIL
T. B. COSGROVE
F. B. YOAKUM, JR.
By T. B. COSGROVE
Attorneys for The Times Mirror Co.

[Title of Board and Causes.]

Case No. XXI-R-1084

OBJECTIONS TO VALIDITY OF DIRECTION OF ELECTIONS AND EXCEPTIONS TO THE SAME: BLANKET OBJECTION TO THE BALLOT OF EACH AND EVERY PERSON PARTICIPATING IN SAID ELECTIONS (LOS ANGELES EXAMINER UNIT)

Comes now Hearst Publications, Incorporated (Los Angeles Examiner Department) and appearing specially, files this, its blanket objection to the votes and ballots of all persons whose names appear on lists prepared under the direction of the acting regional director and to the votes and ballots of all other persons who may vote in the election heretofore on January 9, 1941, directed herein; and said Hearst Publications, Incorporated (Los Angeles Examiner Department) objects to the validity of said Direction of Elections and excepts to said Direction of Elections and to the election to be held thereunder. Said objections and exceptions are based on each and all of the following grounds:

1. None of the newsboys selling the Los Angeles Examiner in Los Angeles, California are employees of Hearst Publications, Incorporated (Los Angeles Examiner Department).

2. The relationship between Hearst Publications, Incorporated (Los Angeles Examiner Department) and said voters (the newsboys engaged in the street sale of Los Angeles Examiner within Los Angeles, California) is not subject to

the jurisdiction of the National Labor Relations Board.

3. Each and all of said voters (the newsboys engaged in the street sale of Los Angeles Examiner within Los Angeles, California) is and are independent contractors.

4. No question affecting commerce has arisen or can arise concerning the representation of said voters in their relationship with Hearst Publications, Incorporated (Los Angeles Examiner Department).

5. The National Labor Relations Board has no jurisdiction over Hearst Publications, Incorporated (Los Angeles Examiner Department) or the business conducted by it.

6. The relations of Hearst Publications, Incorporated (Los Angeles Examiner Department) with said voters are not subject to the jurisdiction of the National Labor Relations Board.

7. No claimed labor dispute between Hearst Publications, Incorporated (Los Angeles Examiner Department) and said voters can affect commerce within the meaning of the National Labor Relations Act.

8. The unit defined by the Board is not, in fact, an appropriate bargaining unit within the intent of the National Labor Relations Act.

Hearst Publications, Incorporated (Los Angeles Examiner Department) reserves the right to make individual challenges to the vote or ballot of each newsboy in said election and the assertion of any such challenge shall not constitute a waiver of the

objections and exceptions herein stated, or of the contentions heretofore made in these proceedings.

Dated: May 13, 1941.

Respectfully submitted,

LAWLER, FELIX & HALL
A. LAURENCE MITCHELL
JOHN M. HALL
By OSCAR LAWLER
Attorneys for Hearst Publications, Incorporated (Los Angeles Examiner Department)

[Title of Board and Causes.]

Case No. XXI-R-928

To the National Labor Relations Board, Washington, D. C., and to William R. Walsh, Acting Director, Twenty-first Region, National Labor Relations Board, Federal Building, Los Angeles, California:

Comes now the respondent, Hearst Publications Incorporated (Los Angeles Evening Herald & Express Department) and hereby challenges the vote of each and every voter or person attempting to vote at the election ordered by the National Labor Relations Board to be held on May 14, 1941, at the Pacific Electric Theater, 627 South Los Angeles Street, Los Angeles, California, and objects to the holding of said election upon the following grounds:

1. That the National Labor Relations Board has no jurisdiction over respondent.

2. That respondent is not engaged in commerce as that term is defined in the National Labor Relations Act.

3. That none of the voters or prospective voters, and none of the persons within the unit approved by the Board, in so far as their news vending activities are concerned, are employees of respondent.

4. That a cessation of the news vending activities of any voter or prospective voter or any person within the unit approved by the Board. would not or could not burden or obstruct commerce or the free flow of commerce.

Respondent incorporates herein by reference all of the objections to this proceeding contained in its Motion to Dismiss Amended Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act dated June 6, 1940, and filed herein June 6, 1940.

By having observers present at said election and by permitting said observers to exercise the privileges of National Labor Relations Board observers Respondent does not acquiesce in the Findings of Fact, Conclusions of Law and Order of the National Labor Relations Board, and does not recede from or waive in any respect its objections hereinabove stated and its position that the National Labor Relations Board has no jurisdiction to order or hold said or any election or to certify representatives.

Dated: May 14, 1941.

HEARST PUBLICATIONS INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT)
By FLINT & MacKAY
By /s/ DONALD W. HAMBLIN
Its Attorneys

Copy

[Title of Board and Causes.]

Case No. R-1923

ELECTION REPORT

Pursuant to the Rules and Regulations of the National Labor Relations Board—Series 2, as amended, Article III, Section 9, the undersigned hereby makes the following Election Report.

On January 9, 1941 and in amendments to its Direction of Election thereafter issued, the National Labor Relations Board directed that an election by secret ballot be conducted among all full time news boys and checkmen who were engaged to sell the News within Los Angeles, California on or before January 9, 1941, the date of the Direction of Election, including employees who did not work on said date because they were ill or on vacation and employees who were then or since temporarily laid off, and excluding bootjackers, temporary, casual, and part time news boys and employees who quit or were discharged for cause after the date of the Order, to determine whether they desire to be represented for purposes of collective bargaining by Los

Angeles News Boys Local Industrial Union No. 75, affiliated with the Congress of Industrial Organizations.

Pursuant to said Direction of Election the undersigned conducted said secret ballot at Pacific Electric Theatre, 627 South Los Angeles Street, Los Angeles, California, May 14, 1941 between the hours of 10:00 a. m. and 10:00 p. m.

The ballots used in the conduct of said secret ballot were in the form attached to this Report as Appendix 1 and made a part hereof. Said secret ballot was conducted in a manner conforming to the directions for the conduct of said secret ballot heretofore issued by the National Labor Relations Board, and full opportunity was accorded to all parties to this investigation to participate therein and to make challenges.

The ballots of thirty-six (36) voters were challenged. Since determination of these challenged ballots will not change the results of the election, no determination with respect to these challenges will be made.

On the 12th day of May, 1941, Stockholders Publishing Company, Inc., filed a letter "Re Case No. R-1923, Stockholders Publishing Company, Inc., Respondent.

"Gentlemen:

"Comes now, Stockholders Publishing Company, Inc., and hereby challenges collectively and severally, all votes of all newsboys which may be cast at the election called by the National Labor Relations Board to be held

on the 14th day of May, 1941, between the hours of 10:00 o'clock a. m. and 4:00 o'clock 4 p. m., and 7:00 o'clock p. m. and 10:00 o'clock p. m., upon the following grounds:

"(a) That the National Labor Relations Board never has had nor does it now have, jurisdiction to order said election or to proceed under Section 9 or any other section of the National Labor Relations Act.

"(b) That no newsboy, either within or without the "appropriate unit" as defined by the National Labor Relations Board is an employee of respondent as a newsboy.

"(c) That the National Labor Relations Board is without jurisdiction to hold said election.

"Yours very truly,
STOCKHOLDERS PUBLISHING COMPANY, INC.
By (Signed) R. L. SMITH
ROBERT L. SMITH
Executive Vice President"

Examination of this objection indicates that the grounds for their objection are based upon facts which had been considered by the Board in its Direction of Election. The matters once having been before the Board and determined by it, the undersigned hereby over-rules the objection contained in the Company's letter.

The undersigned hereby certifies that said secret ballot was fairly and impartially conducted and

that the ballots cast were duly and fairly counted under his supervision, and that statements to such effect from the tellers have been filed with the undersigned.

Your attention is called to Article III, Section 9, of the Rules and Regulations—Series 2, as amended, issued by the National Labor Relations Board which provides that within five (5) days after the serving of the Election Report the parties to the proceedings may file with the Acting Regional Director any objections to the ballots or the Election Report.

Unless objections to this Report are filed within five (5) days after the receipt thereof, the Acting Regional Director will destroy all marked ballots in this election.

The undersigned hereby makes his findings with respect to the results of said secret ballot:

Total on Eligibility List	349
Total Ballots Cast	247
Total Ballots Challenged	36
Total Blank Ballots	1
Total Void Ballots	1
Total Ballots Not Counted	38
Total Ballots Counted	209
Total Votes for Los Angeles News Boys Local Industrial Union No. 75, C. I. O.	191
Total Votes against Los Angeles News Boys Local Industrial Union No. 75, C. I. O.	18

Dated at Los Angeles, California, this 17th day of May, 1941.

WILLIAM R. WALSH
Acting Regional Director, Twenty-first Region National Labor Relations Board, 808 U. S. Post Office & Court House, Los Angeles, California.

[Title of Board and Causes.]

Case No. R-1924

ELECTION REPORT

Pursuant to the Rules and Regulations of the National Labor Relations Board—Series 2, as amended, Article III, Section 9, the undersigned hereby makes the following Election Report.

On January 9, 1941 and in amendments to its direction of election thereafter issued, the National Labor Relations Board directed that an election by secret ballot be conducted among all full time news boys and checkmen who were engaged to sell the Evening Herald & Express within Los Angeles, California, on or before January 9, 1941, the date of the Direction of Election, including employees who did not work on said date because they were ill or on vacation and employees who were then or since temporarily laid off, and excluding bootjackers, temporary, casual, and part time news boys and employees who quit or were discharged for cause

after the date of the Order, to determine whether they desire to be represented for purposes of collective bargaining by Los Angeles News Boys Local Industrial Union No. 75, affiliated with the Congress of Industrial Organizations.

Pursuant to said Direction of Election the undersigned conducted said secret ballot at Pacific Electriet Theatre, 627 South Los Angeles Street, Los Angeles, California, May 14, 1941 between the hours of 10:00 a. m. and 10:00 p. m.

The ballots used in the conduct of said secret ballot were in the form attached to this Report as Appendix 1 and made a part hereof. Said secret ballot was conducted in a maner conforming to the directions for the conduct of said secret ballot heretofore issued by the National Labor Relations Board, and full opportunity was accorded to all parties to this investigation to participate therein and to make challenges.

The ballots of Twenty-nine voters were challenged. Since determination of these challenged ballots will not change the results of the election, no determination with respect to these challenges will be made.

On the 14th day of May, 1941, Hearst Publications Incorporated (Los Angeles Evening Herald & Express Department) filed "In the Matter of Hearst Publications Incorporated (Los Angeles Evening Herald & Express Department) and Los Angeles Newsboys Local Ind. Union No. 75, C. I. O. Petitioner. Case No. XXI-R-928 Consolidated

with Case No. XXI-R-927 and Case No. XXI-R-1062. To the National Labor Relations Board, Washington, D. C., and to William R. Walsh, Acting Director, Twenty-first Region, National Labor Relations Board, Federal Building, Los Angeles, California:"

The above-entitled instrument contains a general challenge to all voters on the general grounds the National Labor Relations Board does not have jurisdiction over Respondent and that the individuals referred to as voters are not employees of Respondent.

Examination of this objection indicates that the grounds for their objection are based upon facts which had been considered by the Board in its Direction of Election. The matters once having been before the Board and determined by it, the undersigned hereby overrules the objection contained in the aforementioned instrument.

The undersigned hereby certifies that said secret ballot was fairly and impartially conducted and that the ballots cast were duly and fairly counted under his supervision, and that statements to such effect from the tellers have been filed with the undersigned.

Your attention is called to Article III, Section 9, of the Rules and Regulations—Series 2, as amended, issued by the National Labor Relations Board which provides that within five (5) days after the serving of the Election Report the parties to the proceedings may file with the Acting Regional Di-

rector any objections to the ballot or the Election Report.

Unless objections to this Report are filed within five (5) days after the receipt thereof, the Acting Regional Director will destroy all marked ballots in this election.

The undersigned hereby makes his findings with respect to the results of said secret ballot:

Total on Eligibility List	209
Total Ballots Cast	179
Total Ballots Challenged	29
Total Blank Ballots	1
Total Void Ballots	0
Total Ballots Not Counted	30
Total Ballots Counted	149
Total Votes for Los Angeles News Boys Local Industrial Union No. 75, C. I. O.	138
Total Votes against Los Angeles News Boys Local Industrial Union No. 75, C. I. O.	11

WILLIAM R. WALSH
Acting Regional Director, Twenty-first Region National Labor Relations Board, 808 U. S. Post Office & Court House, Los Angeles, California

Dated at Los Angeles, California, this 17th day of May, 1941.

[Title of Board and Causes.]

Case No. R-1925

ORDER OVERRULING "OBJECTIONS TO VALIDITY OF DIRECTION OF ELECTIONS AND EXCEPTIONS TO THE SAME; BLANKET OBJECTION TO THE BALLOT OF EACH AND EVERY PERSON PARTICIPATING IN SAID ELECTIONS (TIMES UNIT)"

The Board, on January 9, 1941, having issued a Decision and Direction of Election in the above-entitled cases, and thereafter having issued Amendments to the said Decision and Direction of Election; and thereafter, on May 14, 1941, Attorneys for the Times Mirror Company having filed "Objections to Validity of Direction of Elections and Exceptions to the Same; Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Times Unit)"; and the Board having duly considered the matter,

It is hereby ordered that the said "Objections to Validity of Direction of Elections and Exceptions to the Same; Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Times Unit)" be, and they hereby are, overruled.

Dated, Washington, D. C., May 21st, 1941.

By direction of the Board:

[Seal] BEATRICE M. STERN
Beatrice M. Stern
Executive Secretary

[Title of Board and Causes.]

Case No. R-1923

OBJECTIONS OF STOCKHOLDERS PUBLISHING COMPANY, INC., TO ELECTION REPORT AND THE CONDUCTING THEREOF

Stockholders Publishing Company, Inc., hereinafter referred to as the "Objector," appearing for itself only, and at all times reserving all rights to object to the jurisdiction of said Board, and appearing specially and only for the purpose of filing the within objections pursuant to Section 203.9 of the rules and regulations of the National Labor Relations Board, Series 2, objects to said election report and the manner of conducting said election which was held on the 14th day of May, 1941, between the hours of 10:00 o'clock a. m. and 10:00 o'clock p. m., and objects to the report of the secret ballot dated May 14, 1941, and served upon the Objector May 19, 1941, and objects to the conducting of the election at all by said National Labor Relations Board. Said objections are made upon the following grounds, to-wit:

(a) That the National Labor Relations Board has and had no jurisdiction over the Objector, in that

1. Objector is not engaged in interstate commerce or in any business affecting commerce with foreign countries.

2. Objector is not engaged in interstate or foreign commerce and its business does not affect interstate or foreign commerce.

3. No one of the persons casting a ballot was or is an employee of Objector.

4. Each of the persons casting a ballot in the election was and is an independent merchant engaged in the business of selling newspapers for various publishers and periodicals for various publishers.

5. The cessation of the work of the persons casting ballots at said election aforesaid, in selling and disposing of newspapers and periodicals, would not obstruct commerce or prevent the free flow thereof.

(b) That said election was illegal and void in that:

1. The persons casting ballots at said election were not employees of the Objector.

2. Persons casting ballots at said election were engaged as independent merchants in the sale of two or more newspapers published by two or more different publishers, and that most of said persons were engaged also in the business of selling various other publications and magazines, including, without limiting the generality of the foregoing statement, magazines published by the Curtis Publishing Company, Macfadden Publications, the Crowell Publishing Company, Time, Inc., etc.

3. The persons casting ballots at said purported election were permitted and allowed to cast separate votes on the same question as an alleged employee of Objector as well as an alleged employee of Hearst Publications Incor-

ported (Los Angeles Evening Herald & Express Department).

4. Such persons were not required to elect as to the election in which they chose to participate.

5. All or the majority of the persons participating in said election cast their vote in both elections which were then and there being simultaneously held in connection with Objector and said Hearst Publications Incorporated (Los Angeles Evening Herald & Express Department).

6. At such time all or nearly all of such persons voting at both of such elections were also engaged in the busines of vending and selling as independent merchants, sundry other magazines or newspapers or periodicals or all three.

(c) That the acts of the National Labor Relations Board in ordering said election and in conducting and carrying on such purported election are all illegal and void for the same reasons set forth above respecting the illegality and invalidity of the purported election.

(d) That the acts of said Board in ordering said election and in conducting the same and in rendering the report thereupon are all acts beyond the jurisdiction of said Board, and is an attempt by said Board to abridge the freedom of the Press, and to unlawfully restrain or regulate the proper dissemination of news to the public.

Objector at all times reserves unto itself the

right to urge any and all objections heretofore interposed by it, as well as those presently interposed going to the jurisdiction of the National Labor Relations Board in connection with such purported election, or the report thereof, or in connection with any and all proceedings leading thereto.

Wherefore Objector prays that said election report herein referred to be nullified and stricken from the records of the proceedings; that all proceedings in connection with the ordering of said election and the subsequent conducting thereof be declared by this Honorable Board to be void and of no effect.

Dated at Los Angeles, California this 23rd day of May, 1941.

BINFORD & BINFORD
By L. B. BINFORD
Attorneys for Stockholders
Publishing Company, Inc.

[Title of Board and Causes.]

Case No. XXI-R-928

OBJECTIONS TO THE CONDUCT OF THE BALLOT AND TO THE ELECTION REPORT

Comes now the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated (hereinafter sometimes called the Objector), appearing for itself alone, and without waiving its right to object to the jurisdiction of the above entitled Board and without consenting to the jurisdiction of the above entitled Board, and

appearing solely for the purpose of filing, pursuant to Section 203.9 of the Rules and Regulations of the National Labor Relations Board, Series 2, these Objections to the conduct of the ballot and the Election Report, objects to the conduct of that certain secret ballot, conducted at the Pacific Electric Theater, 627 South Los Angeles Street, Los Angeles, California, May 14, 1941, between the hours of ten o'clock A.M. and ten o'clock P.M., and to the Election Report of said secret ballot, dated May 17, 1941, and served upon Objector May 19, 1941, upon the following and each of the following grounds:

(1) That the National Labor Relations Board has no jurisdiction over Objector.

(2) That Objector is not engaged in commerce among the several states or between the District of Columbia or any territory of the United States, or any other state or territory, or between any foreign country or any state, territory or the District of Columbia or within the District of Columbia or any territory or between points in the same state or territory, or any other state or territory or the District of Columbia, or any foreign country, and therefore the National Labor Relations Board has no jurisdiction over respondent.

(3) That the Objector is not engaged in interstate or foreign commerce, and its activities do not affect interstate or foreign commerce in that only 32/100ths of one percent of the product manufactured or produced by Objector is sold or distributed outside of the State of California, and that the

attempted application of the National Labor Relations Act to the business of the Objector is invalid and void under the Tenth Amendment to the Constitution of the United States and is in excess of the powers granted the Congress by Section 8 of Article I of the Constitution of the United States.

(4) That no one of the persons voting in said election held at Pacific Electric Theater, 627 South Los Angeles Street, Los Angeles, California, May 14, 1941, is an employee of this Objector, and hence the National Labor Relations Board had no jurisdiction to order said election or to conduct the same.

(5) That each of the persons voting in said election was and is an independent merchant selling newspapers, and in the conduct of his news vending activities is an independent merchant and is not an employee of the Objector, and the National Labor Relations Board had no jurisdiction to authorize or conduct an election among or for independent merchandisers and vendees of merchandise purchased from the vendor thereof, to-wit, Objector.

(6) That each of the persons voting in said election is and was in the conduct of his news vending activities engaged solely in intrastate commerce, and therefore the National Labor Relations Board has no jurisdiction over their activities and had no jurisdiction to authorize, order or conduct an election among such persons, and the same was and is wholly invalid and void.

(7) That no one of the persons voting in said election is or was in the conduct of his news vend-

ing activities engaged in interstate commerce or in any business activity having a close, intimate, substantial or any relation to trade, traffic or commerce among the several states or the territory of the United States and foreign countries, and therefore the National Labor Relations Board has no jurisdiction over the Objector or over the persons balloting in said election, and had no jurisdiction to authorize, order or conduct said election.

(8) That no cessation of the news vending activities of the persons balloting in said election, or any of them, can or will burden or obstruct commerce or the free flow of commerce, and therefore the National Labor Relations Board has no jurisdiction over Objector or over its relations with said independent news vendors, and had no jurisdiction to authorize, order or conduct said election.

(9) That no cessation of the news vending activities of the persons balloting in said election, or any of them, can or will lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and therefore the National Labor Relations Board has no jurisdiction over the Objector and has no jurisdiction over the relations existing between Objector and persons engaged in the independent business of vending Objector's products, and the order of the Board authorizing the holding of an election among such independent news vendors and the holding of said election under the auspices of the National Labor Relations Board and the rendition of a purported Report of said election was and is

wholly invalid and void and beyond the authority of the National Labor Relations Board.

(10) That the National Labor Relations Board has no jurisdiction over the relations of the Objector with the persons engaged in the independent business of vending the newspapers purchased by them from the Objector, the Publisher thereof, and therefore each and every action taken by the Board in the conduct of said election and in the rendition of a purported Election Report thereon was and is illegal and void and in excess of the powers of the National Labor Relations Board.

(11) That in the conduct of said election each and every one of the persons permitted to participate and ballot in said election were also permitted to participate and ballot in an election held at the same time and place among vendees of Stockholders Publishing Company, Inc., a corporation publishing the Daily News, erroneously and wrongfully claimed to be employees thereof. That each and all of said persons participating in the election among news vendors selling the Los Angeles Evening Herald and Express, published by Objector, were permitted to participate and ballot in said election upon the erroneous ground that they were employees of the Objector. That nevertheless each and all of said persons were also permitted to participate in the said election held at the same time and place among news vendors selling the Daily News, published by Stockholders Publishing Company, Inc. That each and all of said persons participating in the election among news vendors selling the Daily News, pub-

lished by Stockholders Publishing Company, Inc., were permitted to participate and ballot in said election upon the ground that they were employees of Stockholders Publishing Company, Inc. That each and all of the persons engaged in selling the Los Angeles Evening Herald and Express, published by Objector, also engage at the same time and at the same place in the selling of the Daily News, published by Stockholders Publishing Company, Inc. That in such vending activities such persons are subject to the control and direction of neither the Objector or Stockholders Publishing Company, Inc., and are the employees of neither the Objector or Stockholders Publishing Company, Inc. That that certain Election Report served on Objector on May 19, 1941, is invalid and void in that it purports to report on the result of an election held among alleged employees of the Objector, and all of said persons participating in said election were and are deemed to be by said National Labor Relations Board employees of Stockholders Publishing Company, Inc. That said persons can not be the employees of Objector and at the same time be employees of Stockholders Publishing Company, Inc.

(12) That the action of the National Labor Relations Board in ordering an election among the persons vending the Los Angeles Evening Herald and Express, purchased from and published by Objector, and the conducting of an election by said Board among said persons, and the rendering of a purported Election Report on the result of said

election among said persons, was and is a wholly illegal attempt by said Board to force upon Objector, as employees, a group of persons engaged in the independent business of vending newspapers and periodicals. That each one of said persons vends not only the Los Angeles Evening Herald and Express, published by and purchased from Objector, but for exactly the same number of hours per day and for the same number of days per week, and at the same spot or place of sale, vends also the Daily News, published by and purchased from Stockholders Publishing Company, Inc., and most of said persons, for exactly the same number of hours per day and for the same number of days per week, and at the same spot or place of sale, vend also the Saturday Evening Post, published by Curtis Publishing Company; the Liberty Magazine, published by Macfadden Publications, Incorporated; the Collier's Magazine, published by Crowell Publishing Company; the Time Magazine, published by Time, Inc.; the Life Magazine, published by Time, Inc.; and other magazines and periodicals and the Los Angeles Examiner, published by and purchased from the Los Angeles Examiner Department of Hearst Publications, Incorporated; and the Los Angeles Times, published by and purchased from the Times-Mirror Company. That the National Labor Relations Board may not legally impose upon the Objector the obligations, duties and responsibilities of an employer in respect of persons performing on behalf of many other corporations exactly the same

news vending activities which they perform on behalf of the Objector.

(13) That said election and the purported Election Report rendered thereon was and is wholly invalid and void in that the persons participating in said election were permitted to participate therein upon the wrongful and erroneous ground that they were employees of the Objector and were also permitted to participate in an election held at the same time and place among alleged employees of the Stockholders Publishing Company, Inc. That said persons should have been compelled to elect as to which election each would participate in, and that the failure of the Board to compel each person to so elect, rendered the purported election wholly illegal and void, in that said persons can not render services as employees of the Objector and during the same hours and at the same place render services as employees of Stockholders Publishing Company, Inc.

(14) That each of the ballots cast in the election among the purported employees of the Objector was and is wholly invalid in that each of the persons casting said ballots at the time of said election and prior thereto claimed to be an employee of Stockholders Publishing Company, Inc., and was and is not an employee of the Objector.

(15) That the National Labor Relations Board has no jurisdiction over Objector in that the National Labor Relations Act imposes jurisdiction in said Board only over persons occupying the relationship of employer and employee. That the rela-

tionship existing between the persons participating and balloting in said election and Objector is a vendor-vendee relationship between a manufacturer of goods, to-wit, the Objector and persons buying such goods at wholesale for retail sale to the members of the general public. That the ordering of said election, the conducting thereof by the Board and the rendering of a purported Election Report thereon is in pursuance of an unlawful and illegal attempt by the Board to force the Objectors to adopt a specific method of distribution of its product to the public, i.e., to force the Objectors to distribute the same through employees rather than through independent merchandisers or news vendors as is now and has for many years in the past been the usual and customary method of distributing newspapers. That the ordering of said election, the conducting thereof by the Board and the rendering of a purported Election Report thereon is in pursuance of an illegal and unlawful attempt by the Board to impose the wishes and desires of the Board upon the Objector against its judgment and in defiance of its legal rights, in a matter relating solely to business practices and procedure. That such attempted arrogation of authority by the Board is wholly illegal and unlawful, and beyond the jurisdiction of the Board and in defiance of the pronouncement of the Supreme Court of the United States in the case of The Associated Press v. National Labor Relations Board, 301 U.S. 103, 132, 81 L. Ed. 953, 960, that "The Act (National Labor Relations Act) does not compel the

petitioner (The Associated Press) to employ anyone."

That such attempted arrogation of power by the Board abridges the freedom of the Press guaranteed Objector by the First Amendment to the Constitution of the United States of America and seeks to and tends to and does unlawfully and illegally restrain, coerce, and regulate the free dissemination of news to the public by the Objector, and to abridge the freedom of speech and the freedom of the Press guaranteed to Objector by said First Amendment to the Constitution of the United States.

Wherefore, the Objector prays that said "Election Report," rendered herein, be rejected and ordered stricken from the records and files of this proceeding by this Honorable Board, and that said purported secret ballot conducted at Pacific Electric Theater, 627 South Los Angeles Street, Los Angeles, California, on May 14, 1941, between the hours of ten o'clock A.M. and ten o'clock P.M., be declared null and void and of no force or effect.

Dated at Los Angeles, California, this 23rd day of May, 1941.

FLINT & MacKAY,
By EDWARD L. COMPTON,
Attorneys for the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated.

[Title of Board and Causes.]

Case No. R-1926

ORDER OVERRULING "OBJECTIONS TO VALIDITY OF DIRECTION OF ELECTIONS AND EXCEPTIONS TO THE SAME: BLANKET OBJECTION TO THE BALLOT OF EACH AND EVERY PERSON PARTICIPATING IN SAID ELECTIONS (LOS ANGELES EXAMINER UNIT)"

The Board, on January 9, 1941, having issued a Decision and Direction of Elections in the above-entitled cases and, thereafter, having issued amendments to the said Decision and Direction of Elections; and, thereafter, on May 15, 1941, Attorneys for Hearst Publications, Incorporated (Los Angeles Examiner Department), having filed "Objections to Validity of Direction of Elections and Exceptions to the Same: Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Los Angeles Examiner Unit)"; and the Board having duly considered the matter,

It is Hereby Ordered that the said "Objections to Validity of Direction of Elections and Exceptions to the Same: Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Los Angeles Examiner Unit)" be, and they hereby are, overruled.

Dated, Washington, D. C., May 26, 1941.

By direction of the Board:

[Seal] BEATRICE M. STERN,
Executive Secretary.

[Title of Board and Causes.]

Case No. R-1923

REPORT ON OBJECTIONS

The undersigned has received the Objections to the Election Report, dated May 17, 1941, and signed by the Respondent, Stockholders Publishing Company, Inc.

The undersigned has considered the same and finds that the said Objections raised no material issue with respect to the conduct of the ballot, but that the Objections concern matters which were of record before the Board, which the Board duly considered in issuing its Direction of Election.

Dated at Los Angeles, California, May 26, 1941.

/s/ GEORGE A. YAGER,
Acting Director,
[Seal] National Labor Relations Board,
Twenty-first Region,
808 U.S. Postoffice & Courthouse,
Los Angeles, California.

[Title of Board and Causes.]

Case No. R-1924

REPORT ON OBJECTIONS

The undersigned has received the Objections to the Election Report, dated May 17, 1941, and signed by the Respondent, Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department).

The undersigned has considered the same and

finds that the said Objections raised no material issue with respect to the conduct of the ballot, but that the Objections concern matters which were of record before the Board, which the Board duly considered in issuing its Direction of Election.

Dated at Los Angeles, California, May 26, 1941.

GEORGE A. YAGER,
Acting Director,
National Labor Relations Board,
Twenty-first Region,
808 U.S. Postoffice & Courthouse,
Los Angeles, California.

[Title of Board and Causes.]

Case No. R-1925

ELECTION REPORT

Pursuant to the Rules and Regulations of the National Labor Relations Board—Series 2, as amended, Article III, Section 9, the undersigned hereby makes the following Election Report:

On January 9, 1941, and in amendments to its Direction of Election thereafter issued, the National Labor Relations Board directed that an election by secret ballot be conducted among all news boys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, on or before January 9, 1941, the date of the Direction of Election, including em-

ployees who did not work on said date because they were ill or on vacation and employees who were then or since temporarily laid off, and excluding temporary news boys and employees who quit or were discharged for cause after the date of the Order, to determine whether they desire to be represented for purposes of collective bargaining by Los Angeles News Boys Local Industrial Union No. 75, affiliated with the Congress of Industrial Organizations.

Pursuant to said Direction of Election, the undersigned conducted said secret ballot at Pacific Electric Theatre, 627 South Los Angeles Street, Los Angeles, California, on May 15, 1941, between the hours of 9 a.m. and 5 p.m.

The ballots used in the conduct of said secret ballot were in the form attached to this Report as Appendix I and made a part hereof. Said secret ballot was conducted in a manner conforming to the directions for the conduct of said secret ballot heretofore issued by the National Labor Relations Board, and full opportunity was accorded to all parties to this investigation to participate therein and to make challenges.

On May 9, 1941, the Times Mirror Company filed "In The Matter of the Times Mirror Company and Los Angeles News Boys Local Industrial Union No. 75, C.I.O., Case No. XXI-R-1062, consolidated with XXI-R-927, XXI-R-928 and XXI-R-1084. Objection to Validity of Direction of Elections and Objections to the Same; Blanket Objection to the Ballot of Each and Every Person Participating in

Said Elections (Times Unit)." The above-entitled instrument contains a general challenge to all voters on the general grounds the National Labor Relations Board does not have jurisdiction over Respondent and that the individuals referred to as voters are not employees of Respondent.

Examination of this Objection indicates the grounds for their objection are based upon facts which had been considered by the Board in its Direction of Election. The matters once having been before the Board and determined by it, the undersigned hereby overrules the objections contained in the aforementioned instrument.

The undersigned hereby certifies that said secret ballot was fairly and impartially conducted and that the ballots cast were duly and fairly counted under his supervision, and that statements to such effect from the tellers have been filed with the undersigned.

Your attention is called to Article III, Section 9, of Rules and Regulations—Series 2, as amended, issued by the National Labor Relations Board, which provides that within five (5) days after the serving of the Election Report, the parties to the proceeding may file with the Regional Director any objections to the ballot or the Election Report.

Unless objections to this Report are filed within five (5) days after the receipt thereof, the Regional Director will destroy all marked ballots in this election.

The undersigned hereby makes his findings with respect to the results of said secret ballot:

Total on Eligibility List.....457
Total Ballots Cast 309
Total Ballots Challenged 108
Total Blank Ballots 2
Total Void Ballots 2
Total Ballots Not Counted 112
Total Votes Counted 197
Total Votes for Los Angeles News Boys Local Industrial Union No. 75, C.I.O. 131
Total Votes against Los Angeles News Boys Local Industrial Union No. 75, C.I.O. 66

Dated: June 2, 1941

/s/ WILLIAM R. WALSH,
Regional Director,
National Labor Relations Board,
808 U. S. Postoffice & Courthouse,
Los Angeles, California.

[Title of Board and Causes.]

Case No. R-1925

OBJECTIONS TO THE CONDUCT OF THE BALLOT AND TO THE ELECTION REPORT

Comes now The Times Mirror Co., a corporation (hereafter called "Times"), and severing itself from all other persons, and appearing specially and without waiving all objections heretofore made to the jurisdiction of the National Labor Relations Board (hereafter called "Board"), and for the

sole purpose of filing (pursuant to Article III, Section 9 of Rules and Regulations—Series 2, as Amended—issued by the Board) its objections to the conduct of the ballot and the Election Report, and hereby objects to the conduct of that certain secret ballot conducted at Pacific Electric Theatre, 627 South Los Angeles Street, Los Angeles, California, on May 15, 1941, between the hours of 9:00 o'clock A. M. and 5:00 o'clock P. M., and to the Election Report issued herein under date of June 2, 1941, and served upon the Times on June 3, 1941. Said objections are based upon each and all of the following grounds:

2. The appropriate unit as determined by the Board (namely, newsboys in Los Angeles and Glendale) is not and was not in fact an appropriate unit, in that newsboys with interests similar to those of newsboys within the city limits of Los Angeles and Glendale were excluded from the unit for the reason, as stated by the Board in its Decision dated January 9, 1941, that

> "union organization has not at present extended to suburban newsboys other than the Times newsboys in Glendale, California."

The record herein discloses that newsboys selling in other nearby areas such as Beverly Hills, Burbank, Belvedere, South Pasadena, Westwood, Huntington Park and other unincorporated territory are similarly situated to newsboys selling in Los Angeles and Glendale with respect to methods of sale, price paid for papers, methods of distribution of papers to said newsboys, and hours engaged in

sales of papers. A map correctly depicting the geographical proximity of said nearby areas to the City of Los Angeles is attached hereto, marked Exhibit "B" and incorporated herein. The arbitrary selection of these two groups (Los Angeles and Glendale) as the appropriate unit is violative of the National Labor Relations Act and contrary to the decision of the Supreme Court of the United States as declared in Pittsburgh Plate Glass Co. v. NLRB, 61 S. Ct. 908.

5. A majority of the newsboys in an appropriate unit (i.e., all newsboys engaged in the street sale of the Times at established spots four or more hours a day, five or more days a week, within Los Angeles, Glendale, Beverly Hills, Burbank, Belvedere, South Pasadena, Westwood, Huntington Park, and other nearby unincorporated territory, State of California, except temporary newsboys) did not vote at said election.

7. The relationship between the Times and the newsboys declared by the Board eligible to vote in said election is not subject to the jurisdiction of the Board.

8. Each of the said newsboys is and was an independent contractor and none of said newsboys is or was an employee of the Times, and there is no evidence in the record in this proceeding to sustain the Board's finding that said newsboys are or were employees of the Times.

9. No question affecting commerce has arisen, or can arise, concerning the representation of said newsboys in their relationship with the Times.

10. The Board has no jurisdiction over the Times or the business conducted by it.

11. The relations of the Times with said newsboys are not subject to the jurisdiction of the Board.

12. No claimed labor dispute between the Times and said newsboys can affect commerce within the meaning of the National Labor Relations Act.

The foregoing grounds of objection are cumulative; no one is exclusive of any other.

Wherefore, The Times Mirror Co. prays that said Election Report be rejected, that said purported secret ballot be declared null and void, and that the petition herein for certification be dismissed.

COSGROVE & O'NEIL,
T. B. COSGROVE,
F. B. YOAKUM, Jr.,
By F. B. YOAKUM, Jr.,
Attorneys for The Times Mirror Co.

[Title of Board and Causes.]

Case No. R-1925

REPORT ON OBJECTIONS

This matter comes on before the Regional Director on the Objections to the Conduct of the Ballot and to the Election Report of The Times-Mirror Co. The said Objections of The Times-Mirror Co. cover certain matters relating to the conduct of

the ballot held on May 15, 1941, among employees of The Times-Mirror Co.

The undersigned has investigated the matters raised by the Objections to the Conduct of the Ballot and to the Election Report and hereinafter sets forth his findings in connection therewith.

The undersigned has investigated the allegations raised in paragraphs number 2, 5, 7, 8, 9, 10, 11, and 12, and finds these allegations are based upon facts which have been considered by the Board in its Direction of Election. The matters once having been before the Board and determined by it, the undersigned hereby overrules the objections in the paragraphs specified.

Dated: June 12, 1941.

(Signed) WILLIAM R. WALSH,
Director,
National Labor Relations Board,
[Seal] Twenty-first Region.

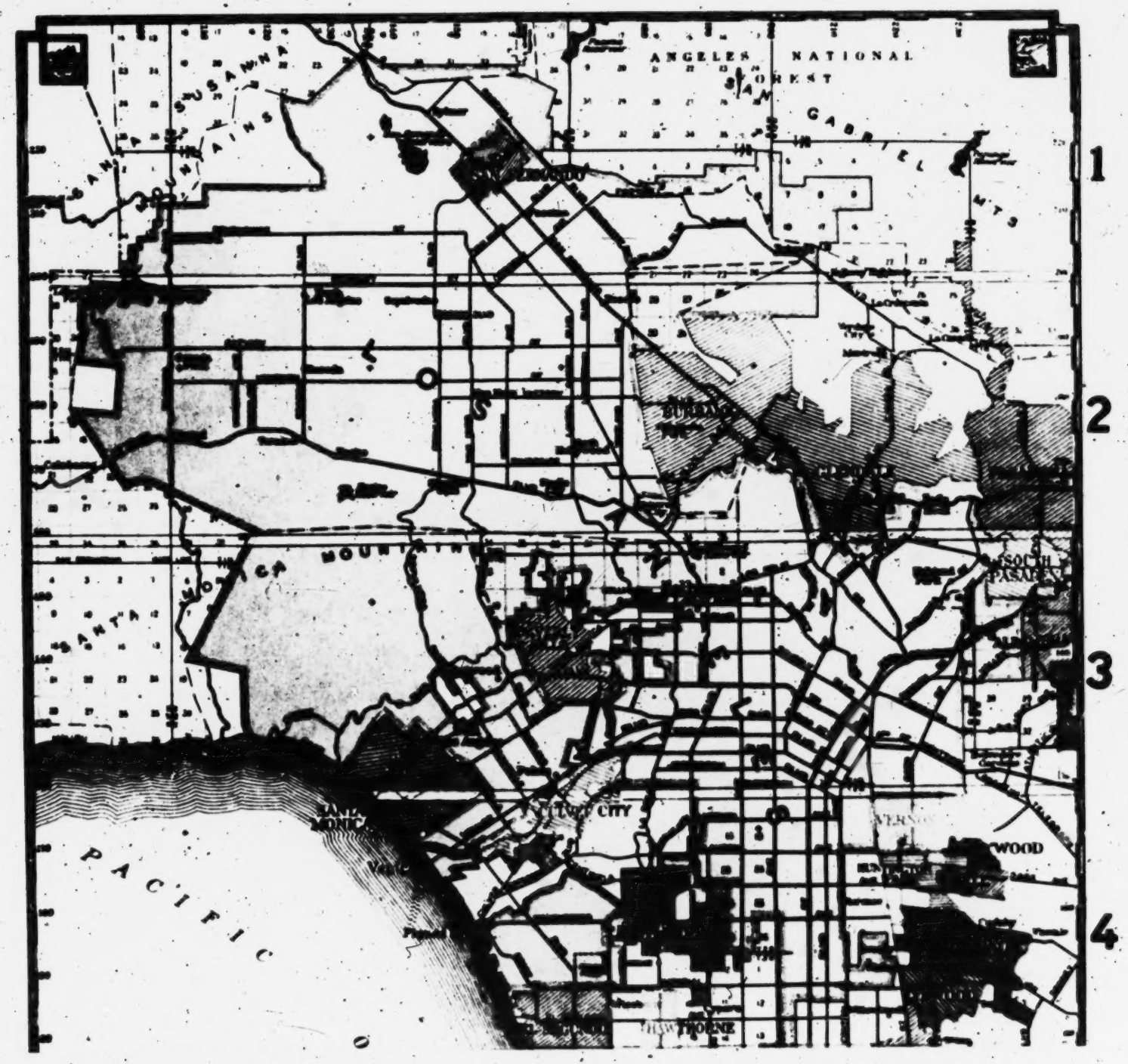
[Title of Board and Causes.]

Cases Nos. R-1923-1924-1925

SUPPLEMENTAL DECISION
and
CERTIFICATION OF REPRESENTATIVES

On January 9, 1941, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Elections[1] in the above-

[1] 28 N. L. R. B., No. 151.


ANGELES NATIONAL FOREST
SAN GABRIEL MTS
SANTA SUSANNA MOUNTAINS
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SOUTH PASADENA
CULVER CITY
WOOD
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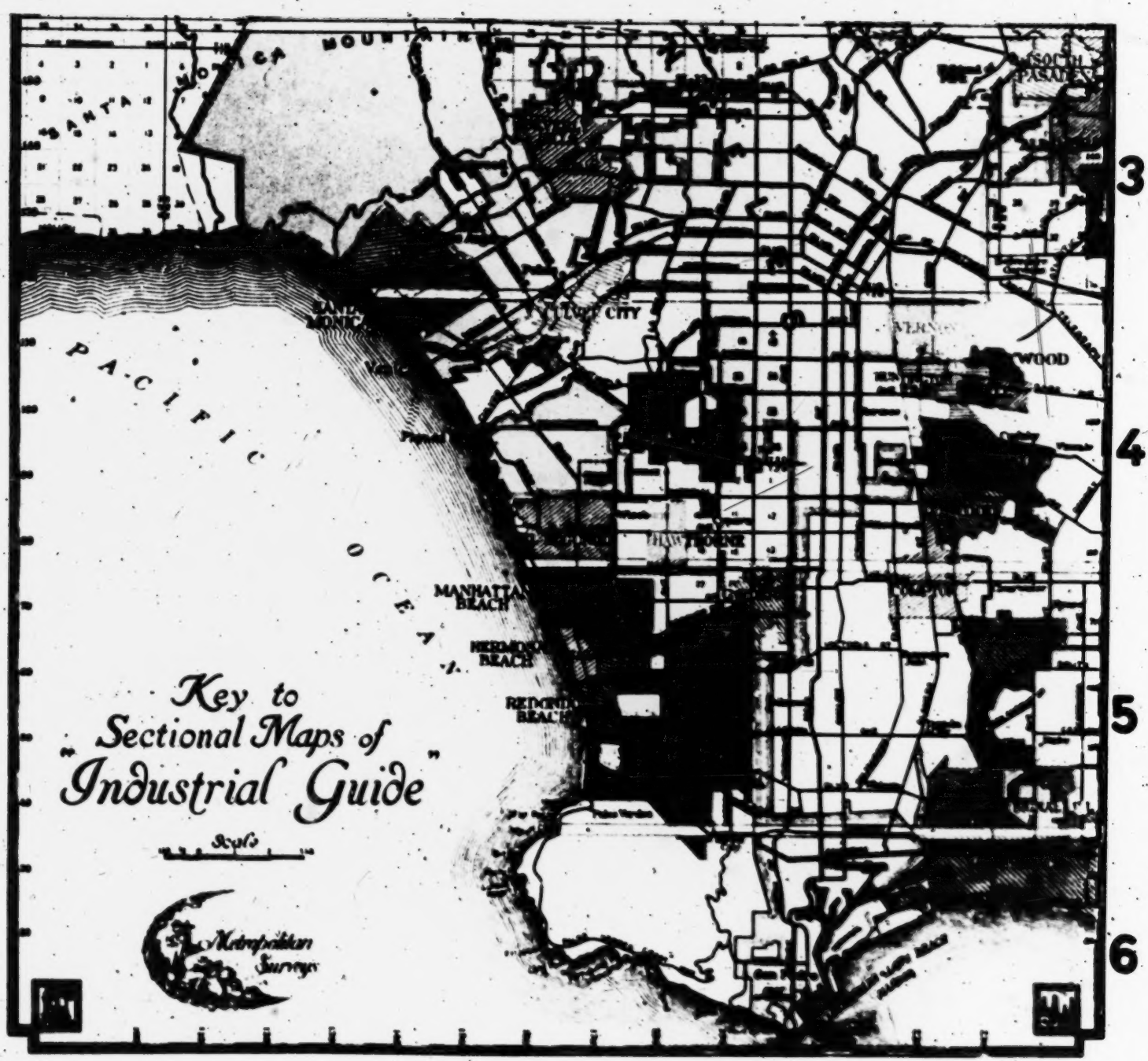
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PACIFIC
OCEAN
MANHATTAN BEACH
HERMOSA BEACH
REDONDO BEACH
Key to
Sectional Maps of
"Industrial Guide"
Metropolitan Surveys

entitled proceedings.[2] Pursuant to the Direction of Elections and various amendments thereto[3] separate elections by secret ballot were conducted under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California) on May 14, 1941, among employees of the News and of the Herald, and on May 15, 1941, among employees of the Times.[4]

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[2]On March 14, 1941, Stockholders Publishing Company, Inc., Los Angeles, California, herein called the News, and Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), Los Angeles, California, herein called the Herald, filed their respective motions to reopen the proceedings and to modify the Decision. By order dated March 21, 1941, the Board denied the said motion of the News. The motion of the Herald is hereby denied.

On May 14, 1941, the Times-Mirror Company, Los Angeles, California, herein called the Times, filed "Objections to Validity of Direction of Elections and Exceptions to Same; Blanket Objection to the Ballot of Each and Every Person Voting in Said Elections (Times Unit)," which the Board by order dated May 21, 1941, overruled. On May 14, 1941, the News and the Herald, by documents filed with the Regional Director, separately "challenged" all votes which might be cast in the elections among their respective employees. The Regional Director considered the documents as objections to the election and in his Election Reports referred to below, overruled such objections. The rulings are hereby affirmed.

[3]29 N. L. R. B., No. 16; 29 N. L. R. B. No. 16a; 30 N. L. R. B., No. 110; 30 N. L. R. B., No. 110a; 31 N. L. R. B., No. 115.

[4]Pursuant to the said Decision and Direction of Elections an election was also conducted on May

The News Election

On May 17, 1941, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—series 2, as amended, issued and duly served upon the parties his Election Report relating to the election among the employees of the News. As to the balloting and its results the Regional Director reported as follows:

Total on eligibility list	349
Total ballots cast	247
Total ballots challenged	36
Total blank ballots	1
Total void ballots	1
Total ballots not counted	38
Total ballots counted	209
Total votes for Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.[5]	191
Total votes against Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.	18

15, 1941, among employees of Hearst Publications, Incorporated (Los Angeles Examiner Department), Los Angeles, California. Since the Regional Director has not completed his investigation and has not issued his Election Report with respect to that election, no action is taken in this Supplemental Decision and Certification of Representatives with respect thereto.

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[5] Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is herein called the Union.

On May 24, 1941, the News filed with the Regional Director Objections to the Election Report and to the conduct of the ballot. On May 26, 1941, the Regional Director, acting pursuant to Article III, Section 9, of said Rules and Regulations, issued his Report on Objections. The Board has considered the Objections and the Regional Director's Report on Objections and finds that the Objections raise no substantial or material issues with respect to the conduct of the election. The Objections are hereby overruled. Since the challenged ballots cannot affect the result of the election, it is unnecessary to pass upon the challenges.

The Herald Election

On May 17, 1941, the Regional Director, acting pursuant to Article III, Section 9, of said Rules and Regulations, issued and duly served upon the parties his Election Report relating to the election among the employees of the Herald. As to the balloting and its results the Regional Director reported as follows:

Total on eligibility list	209
Total ballots cast	179
Total ballots challenged	29
Total blank ballots	1
Total void ballots	0
Total ballots not counted	30
Total ballots counted	149
Total votes for Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.	138

Total votes against Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. 11

On May 23, 1941, the Herald filed Objections to the Conduct of the Ballot and to the Election Report. On May 26, 1941, the Regional Director, acting pursuant to Article III, Section 9, of said Rules and Regulations, issued his Report on Objections. The Board has considered the Objections and the Regional Director's Report on Objections, and finds that the Objections raise no substantial or material issue with respect to the conduct of the election. The Objections are hereby overruled. Since the challenged ballots cannot affect the result of the election, it is unnecessary to pass upon the challenges.

The Times Election

On June 2, 1941, the Regional Director, acting pursuant to Article III, Section 9, of said Rules and Regulations, issued and duly served upon the parties his Election Report relating to the election among the employees of the Times. As to the balloting and its results the Regional Director reported as follows:

Total on eligibility list 457
Total ballots cast 309
Total ballots challenged 108
Total blank ballots 2
Total void ballots 2
Total ballots not counted 112
Total ballots counted 197

Total votes for Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. 131

Total votes against Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. 66

In his said Election Report the Regional Director sustained 51 of the challenges and overruled the remaining 57.

On June 6, 1941, the Times filed with the Regional Director Objections to the Conduct of the Ballot and to the Election Report. The Union filed no objections to the Election Report. On June 12, 1941, the Regional Director, acting pursuant to Article III, Section 9, of said Rules and Regulations, issued his Report on Objections.

In its Objections the Times stated; among other things, that the notice of election circulated by the Acting Regional Director was misleading and not in conformity with the Board's Direction of Elections, in that the Direction of Elections directed that an election be held among certain newsboys engaged in the sale of "The Los Angeles Times," a newspaper published by the Times,[6] within Los Angeles and Glendale, California, whereas the notice of election announced that the election would be held among all such newsboys within Los Angeles, California. Glendale is a suburb adjacent to Los Angeles. In his Report on Objections the Re-

[6] "The Los Angeles Times" was referred to in the Decision and Direction of Elections and in the said Objections as the Times.

gional Director reported the following: that mention of Glendale was omitted from the notice of election through a clerical error; that there are approximately 16 known vendors of "The Los Angeles Times" in Glendale, each of whom was registered by an agent of the Board accompanied by a representative of the Times, and each of whom, as he was registered, received an identification card;[7] that a notice of election was sent by first class mail to each newsboy registered, at his home address; and that 8 of the approximately 16 eligible newsboys in Glendale cast ballots in the election. The Regional Director found that the notice of election was sufficient and that the objection in

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[7]The identification card was in the following form:

No.....

United States of America
National Labor Relations Board
808 U. S. Postoffice Bldg., Los Angeles
Voter's Identification Card

Newsboys: Bring this card with you when you vote.

Newsboys may appear on election day even if they have not received or have lost their identification card. Dates and place of election will be announced later.

Do Not Sign This Card

.....

.....

Date.....1941 No.....

(Footnote continued next page.)

question raised no substantial or material issue with respect to the conduct of the ballot. We agree with this finding.

No objections were filed to the Regional Director's ruling mentioned above sustaining challenges to 51 ballots.[8] The Times objected to the Regional Director's action in overruling its challenges to 32 ballots,[9] and the Regional Director found, on the basis of his investigation of the facts, that this objection raised no substantial or material issue with respect to the conduct of the election. Since all the challenged ballots which the Regional Director ruled valid, including both those challenged

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United States of America
National Labor Relations Board

Name .....
Address .....
Location .....
Times ☐; News ☐; Examiner ☐; Herald Express ☐
Employed on or prior to Jan. 9, 1941.....
Yes ☐ No ☐
Employed for.....months.

.....
Newsboy's Signature

.....
Board Agent

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[8]Of the sustained challenges, 50 were interposed by the Times and 1 by the Union.

[9]The remaining overruled challenges, numbering 25, were interposed by the Union.

by the Times and those challenged by the Union, could not affect the outcome of the election, it is unnecessary to pass upon the challenges. We therefore find that this objection raises no substantial or material issue with respect to the conduct of the ballot.

The Times interposed various general objections to the Election Report, none of which, however, raise any substantial or material issue with respect to the conduct of the ballot.

We hereby overrule in their entirely the Times' Objections to the Conduct of the Ballot and to the Election Report.

CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9(c) of the National Labor Relations Act, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended,

It is Hereby Certified that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been designated and selected by a majority of all employees of Stockholders Publishing Company, Inc., Los Angeles, California, who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys, as their representative for the purpose of collective bargaining and that, pursuant to the provisions of Section 9(a) of the Act, Los Angeles

Newsboys Local Industrial Union No. 75, C. I. O., is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment;

It is Hereby Certified that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been designated and selected by a majority of all employees of Hearst Publications, Incorporated, (Los Angeles Evening Herald & Express Department) Los Angeles, California, who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9(a) of the Act, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment;

It is Hereby Certified that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been designated and selected by a majority of all employees of The Times-Mirror Company, Los Angeles, California, who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, excluding temporary newsboys, as their representative for the purpose of collective bargaining, and that, pur-

suant to the provisions of Section 9(a) of the Act, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Washington, D. C., this 30th day of Jul 1941.

HARRY A. MILLIS, Chairman
EDWIN S. SMITH, Member
WM. M. LEISERSON, Member
[Seal] NATIONAL LABOR RELATIONS BOARD

[Title of Board and Causes.]

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Vernon S. Green, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 30th day of July, 1941, I mailed postpaid, bearing government frank, by registered mail, a copy of the Supplemental Decision and Certification of Representatives to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union, No. 75, C.I.O.,
Att: Messrs. Pat Comorre, Gene L. Alley and Roy Eley,
Room 304, 212 W. 3rd Street,
Los Angeles, Calif.

Gallagher, Wirin & Johnson,
257 South Spring St.,
Los Angeles, Calif.

Stockholders Publishing Company,
12th & Los Angeles Sts.,
Los Angeles, Calif.

Messrs. L. B. Binford and Howard M. Binford,
606 S. Hill St.,
Los Angeles, Calif.

Hearst Publication, Incorporated, (Los Angeles Evening Herald & Express Department),
1243 Trenton Street,
Los Angeles, Calif.

Flint and McKay,
Att: Messrs. Edward L. Compton and Donald W. Hamblin,
458 S. Spring Street,
Los Angeles, Calif.

Hearst Publications (Los Angeles Examiner Department),
410 Hearst Building,
San Francisco, Calif.

Lawler, Felix and Hall,
Att: Messrs. John M. Hall, Marcus Matson and A. L. Mitchell,
605 W. Tenth Street,
Los Angeles, Calif.

Times Mirror Co.,
2nd & Spring Streets,
Los Angeles, Calif.

Cosgrove & O'Neil,
Att: Messrs. T. B. Cosgrove and F. B. Yakim, Jr.,
458 S. Spring Street,
Los Angeles, Calif.

/s/ VERNON S. GREEN.

Subscribed and sworn to before me this 30th day of July, 1941.

[Seal] IRVING HELBLING.

My commission expires Sept. 2, 1945.

[Title of Board and Causes.]

Case No. R-1926

ELECTION REPORT

Pursuant to the Rules and Regulations of the National Labor Relations Board—Series 2, as amended, Article III, Section 9, the undersigned hereby makes the following Election Report:

On January 9, 1941, and in amendments to its Direction of Election thereafter issued, the National Labor Relations Board directed that an election by secret ballot be conducted among all news boys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, on or before January 9, 1941, the date of the Direction of Election, including employees who did not work on said date because they were ill or on vacation and employees who were then or since temporarily laid off, and excluding temporary news boys and employees who quit or were discharged for cause after

desire to be represented for purposes of collective bargaining by Los Angeles News Boys Local Industrial Union No. 75, affiliated with the Congress of Industrial Organizations.

Pursuant to said Direction of Election, the undersigned conducted said secret ballot at Pacific Electric Theatre, 627 South Los Angeles Street, Los Angeles, California, on May 15, 1941, between the hours of 9 a.m. and 5 p.m.

The ballots used in the conduct of said secret ballot were in the form attached to this Report as Appendix I and made a part hereof. Said secret ballot was conducted in a manner conforming to the directions for the conduct of said secret ballot heretofore issued by the National Labor Relations Board, and full opportunity was accorded to all parties to this investigation to participate therein and to make challenges.

The ballots of 152 voters were challenged, 33 by the Union and 119 by the Company. In this Report the Regional Director has found that none of the challenges by the Union have merit and that all of the votes should be counted. In this Report the Regional Director has found 59 of the challenges made by the Company have merit and the votes should not be counted, and 60 of the challenges do not have merit and the votes should be counted.

In Appendix II are the names of 32 voters challenged by the Union on the ground the voter is not in the unit defined by the Board. The Union now states that upon receipt of the eligibility list prior to the election, it checked the locations and did not

find present voters named on the eligibility list. Challenges were made on that ground. With regard to the 32 challenges of the Union, the Regional Director has considered the challenges, has reviewed the affidavits of the men so challenged, and through his agents has conducted a survey among certain of these voters at the locations set out on the registration list; and from these sources has secured competent information to support his action, and the Regional Director now finds the challenges are without merit and that these ballots should be counted.

At the election the Union challenged the vote of a person whose name appears in Appendix III on the ground he was not within the Board's Order because of temporary supervisory duties. The Regional Director has considered the challenges and finds the challenge without merit and that this ballot should be counted.

At the election the Company challenged the vote of a person whose name appears in Appendix IV on the ground this person had been discharged prior to the election. The Regional Director has considered the challenge and finds the challenge has merit and the ballot should not be counted.

At the election the Company challenged the votes of two persons whose names appear in Appendix V on the ground the Company had ceased selling papers to them prior to January 9, 1941. The Regional Director has considered the challenges and finds they have merit and that the ballots should not be counted.

At the election the Company challenged the votes

of three persons whose names appear in Appendix VI on the ground that they were not qualified voters and were entirely unknown to the Company's representatives. The Regional Director has considered the challenges and finds they have merit and those ballots should not be counted.

At the election the Company challenged the votes of five persons whose names appear in Appendix VII on the grounds they were not qualified because they were not within the unit described in the Board's Order. The Regional Director has investigated the challenges and finds the voters did not make affidavits although afforded this opportunity, and there is nothing to refute the allegations of the Company and investigation fails to disclose the whereabouts of the voters. The Regional Director finds the challenges have merit and the votes should not be counted.

At the election the Company challenged the votes of four persons whose names appear in Appendix VIII on the broad ground they were not in the unit found by the Board to be appropriate. The Regional Director has investigated the challenges and finds the voters so challenged are within the unit found by the Board to be appropriate and that the challenges are without merit and the votes should be counted.

At the election the Company challenged the votes of 10 persons whose names appear in Appendix IX on the ground they were not eligible because of having quit their jobs before the date of election. The Regional Director has investigated the challenges

and finds they have merit and their votes should not be counted.

At the election the Company challenged the votes of five persons whose names appear in Appendix X on the grounds they were not eligible because of having quit their jobs before the date of the election. The Regional Director has investigated the challenges and finds they are without merit and the votes should be counted.

At the election the Company challenged the votes of 11 persons whose names appear in Appendix XI and subdivisions thereof on the ground they were not eligible for the reason they were not engaged in selling papers on or before January 9, 1941, the eligibility date set by the Board in its Order. The Regional Director has investigated the challenges of the votes cast by the persons whose names appear in Appendix XI A and finds they have merit and the votes should not be counted. The Regional Director has investigated the challenges against the votes of those persons named in Appendix XI B and finds the challenges have no merit and the votes should be counted. The voter whose name appears in Appendix XI C was challenged by the Company on the ground he was not eligible for the reason he was not engaged in selling papers on or before January 9, 1941. The question of eligibility having been raised by the Company, the Regional Director has investigated this challenge and finds the individual named in this Appendix secures his newspapers from a motor wholesaler who supplies markets, drug stores, news stands and news boys in a large territory in a

transaction between the motorman and the vendor, said transaction involving a sales activity which introduces elements making questionable the possibilities of full requirement with the Board's Order. The Regional Director has considered the challenge to this voter's ballot and finds the challenge is valid and the ballot should not be counted.

At the election the Company challenged the votes of 38 persons on the grounds they were selling less than 4 hours a day. The names of these voters appear in Appendix XII and subdivisions thereof. In Appendix XII A are the names of seven persons whose votes were challenged by the Company on the ground they were ineligible because they were not engaged in selling 4 or more hours a day. The Regional Director has investigated the challenges and finds they have merit and the votes should not be counted. The names of 24 persons appear in Appendix XII B. They were challenged by the Company on the ground they were not engaged in selling 4 or more hours a day. The Regional Director has investigated the challenges and finds them without merit and the votes should be counted. In Appendix XII C are the names of six voters challenged because they were not engaged in selling 4 hours a day. The question of eligibility of the voters having been raised, the Regional Director conducted an investigation and in his investigation found these persons secured their newspapers from motor wholesalers who supply markets, drug stores, news stands and news boys in a large territory in a transaction between the motorman and the vendor, said trans-

action involving a sales activity which introduces elements making questionable the possibilities of full requirement with the Board's Order. Sufficient question of eligibility has been raised by this factor. The Regional Director has considered the challenges to these voters and finds the challenges are valid and these ballots should not be counted. At the election the Company challenged the ballot of a voter whose name appears in Appendix XII D. The voter was challenged on the ground the voter was not engaged in selling 4 hours a day. A question of eligibility of the voter having been raised by the Company, the Regional Director conducted an investigation. The investigation reveals the sales location of the challenged voter is not within the district described in the Board's Order. The Regional Director finds the challenge is valid and the ballot should not be counted.

In Appendix XIII are the names of 22 voters challenged by the Company on the ground they secured their papers from sources other than the Examiner. The Regional Director has considered the challenges and has reviewed affidavits of the voters so challenged and finds these voters so challenged swore they are engaged in the sale of the Examiner within the meaning of the Board's Order and the Regional Director now finds the challenges are without merit and these ballots should be counted.

In Appendix XIV appears the name of a voter challenged on the ground he secured his papers from a source other than the Examiner and that he was not engaged in selling 4 or more hours a day. The

Regional Director has investigated the challenge and finds it has merit and the vote should not be counted.

At the election the Company challenged the votes of six persons classified as relief men, whose names appear in Appendix XV, on the ground they were not engaged in the selling of papers on or before January 9, 1941. The Regional Director has investigated these challenges and finds the Company has demonstrated accurate knowledge of the activities and whereabouts of its relief men. The Regional Director is willing to accept the statements of the Company with regards to the voters in Appendix XV and finds the challenges appear valid and the ballots should not be counted.

At the election the Company challenged the votes of three persons whose names appear in Appendix XVI on the ground they did not come within the unit found by the Board to be appropriate. The Regional Director has investigated the challenges and finds the information supplied by the voters in their sworn statements indicates the voters did not spend sufficient time in selling to come within the meaning of the Board's Order. The challenges have merit and the votes should not be counted.

At the election the Company challenged the votes of three persons whose names appear in Appendix XVII on the ground they were not engaged in selling within the official limits of the City of Los Angeles. The Regional Director has investigated the challenges and finds the challenges have merit and the votes should not be counted.

In Appendix XVIII are the names of five per-

sons who were challenged by the Company. These persons, for the convenience of this Report, are grouped in this Appendix. At the election the Company challenged the vote of Cass Westermeier on the ground he had quit after January 9, 1941, and before May 15, 1941. The Regional Director has investigated the challenge and finds it has merit and that the ballot should not be counted. At the election the Company challenged the vote of M. Cohen on the ground he had quit after January 9 and before May 15, 1941. The Regional Director has investigated the challenge and finds it has no merit and the vote should be counted. At the election the Company challenged the vote of Oscar B. Sharp on the ground he had quit after January 9 and prior to May 15, 1941. The Regional Director has investigated the challenge and finds it has no merit and the ballot should be counted. At the election the Company challenged the vote of W. J. Cartner on the ground he was not qaulified under the Board's Order. The Regional Director investigated on several occasions and found neither Cartner nor anyone at his supposed corner who knew him. The Regional Director finds the challenge has merit and the vote should not be counted. At the election the Company challenged the vote of G. Gleeson on the ground he had quit before May 15, 1941. The Regional Director has investigated the challenge and finds it has no merit and the vote should be counted.

On May 13, 1941, Hearst Publications, Inc. (Los Angeles Examiner Department) filed "In the Matter of Hearst Publications, Inc. (Los Angeles Ex-

aminer Department) and Los Angeles News Boys Local Industrial Union No. 75, C. I. O., Case No. XXI-R-1084, consolidated with XXI-R-927, XXI-R-928, and XXI-R-1062. Objections to Validity of Direction of Elections and Exceptions to the Same: Blanket Objection to the Ballot of Each and Every Person Participating in Said Election (Los Angeles Examiner Unit)." The above-entitled instrument contains a general challenge to all voters on the general grounds the National Labor Relations Board does not have jurisdiction over respondent and that the individuals referred to as voters are not employees of respondent. An examination of this objection indicates the grounds for the objection are based upon the facts which have been considered by the Board in its Direction of Election. The matters once having been before the Board and determined by it, the undersigned hereby overrules the objections contained in the aforementioned instrument.

The undersigned hereby certifies that said secret ballot was fairly and impartially conducted and that the ballots cast were duly and fairly counted under his supervision and that statements to such effect from the tellers have been filed with the undersigned.

Your attention is called to Article III, Section 9 of the Rules and Regulations—Series 2, as amended, issued by the National Labor Relations Board, which provides that within five (5) days after the serving of the Election Report, the parties to the proceeding may file with the Regional Director any objections to the ballot or the Election Report.

Unless objections to this Report are filed within five (5) days after the receipt thereof, the Regional Director will destroy all marked ballots in this election.

The undersigned hereby makes his findings with respect to the results of said secret ballot.

Total on elegibility list	453
Total ballots cast	320
Total ballots challenged	152
Total blank ballots	1
Total void ballots	2
Total ballots not counted	155
Total ballots counted	165
Total votes for Los Angeles News Boys Industrial Union No. 75, C. I. O.	100
Total votes against Los Angeles News Boys Industrial Union No. 75, C.I.O.	65

Dated this 29th day of August, 1941.

WILLIAM R. WALSH, Director
National Labor Relations Board, 21st Region, 808 U. S. Postoffice & Courthouse Building, Los Angeles, California.

[Title of Board and Causes.]

Case No. R-1926

OBJECTIONS TO THE CONDUCT OF THE BALLOT AND TO THE ELECTION REPORT.

Comes now Hearst Publications Incorporated, Los Angeles Examiner Department (hereinafter

sometimes called the "Objector"), appearing for itself alone and without waiving its right to object to the jurisdiction of the above-entitled Board and without consenting to the jurisdiction of the above entitled Board, and appearing solely for the purpose of filing, pursuant to Section 203.9 of the rules and regulations of the National Labor Relations Board, Series 2, these objections to the conduct of the ballot and to the Election Report, objects to the conduct of that certain ballot conducted at the Pacific Electric Theatre, 627 South Los Angeles Street, Los Angeles, California, on May 15, 1941, and to the Election Report of said ballot dated August 29, 1941, and served upon this Objector September 2, 1941, upon each and all of the following grounds:

1. That the National Labor Relations Board has no jurisdiction over Objector.

2. That Objector is not engaged in commerce among the several states or between the District of Columbia or any territory of the United States, or any other state or territory, or between any foreign country or any state, territory or the District of Columbia or within the District of Columbia or any territory, or between points in the same state or territory, or any other state or territory or the District of Columbia, or any foreign country, and therefore the National Labor Relations Board has no jurisdiction over this Objector.

3. That the Objector is not engaged in interstate or foreign commerce and its activities do not affect interstate or foreign commerce and that the attempted application of the National Labor Rela-

tions Act to the business of Objector is invalid and void under the Tenth Amendment to the Constitution of the United States and is in excess of the powers granted to Congress by Section 8 of Article I of the Constitution of the United States.

4. That no one of the persons voting in the ballot or election held at Pacific Electric Theatre, 627 South Los Angeles Street, Los Angeles, California, on May 15, 1941, is or has been an employee of Objector and the National Labor Relations Board had no jurisdiction to order said ballot or election or to conduct the same.

5. That each of the persons voting in said election was and is an independent merchant and in the conduct of any newspaper vending activities was and is an independent merchant and is not and has not been an employee of Objector and the National Labor Relations Board had no jurisdiction to authorize or conduct an election among or for independent merchandisers of merchandise purchased from Objector.

6. That each of the persons voting in said election is and was in the conduct of any newspaper selling activities engaged solely in intrastate commerce and the National Labor Relations Board has no jurisdiction over their activities and had no jurisdiction to authorize, order or conduct an election among such persons and the same was and is wholly invalid and void.

7. That no one of the persons voting in said ballot or election is or was in the conduct of his newspaper selling activities engaged in interstate

commerce or in any business activity having a close, intimate, substantial or any relation to trade traffic or commerce among the several states or the territory of the United States and foreign countries, and therefore the National Labor Relations Board has no jurisdiction over Objector or over the persons balloting in said election and had no jurisdiction to authorize, order or conduct said election.

8. That no cessation of the newspaper selling activities of the persons balloting in said election, or any of them, can or will burden or obstruct commerce or the free flow of commerce and the National Labor Relations Board has no jurisdiction over Objector or over any relations with the persons balloting in said election and has no jurisdiction to authorize, order or conduct said election.

9. That no cessation of the news vending activities of the persons balloting in said election, or any of them, can or will lead, or tend to lead, to a labor dispute burdening or obstructing commerce or the free flow of commerce and the National Labor Relations Board has no jurisdiction over Objector and has no jurisdiction over any relations existing between Objector and the persons so balloting in said election, and the order of the Board authorizing the holding of an election among such persons and the holding of said election or the rendition of a purported report of said election was and is wholly invalid and beyond the authority of the National Labor Relations Board.

10. That the National Labor Relations Board has no jurisdiction over the relations of Objector with persons engaged in the independent business of selling newspapers purchased by them from Objector, the publisher thereof, and each and every action taken by the Board in the conduct of said election and in the rendition of a purported election report thereon was and is illegal and void and in excess of the powers of the National Labor Relations Board.

11. That in the conduct of said election and ballot a substantial number of the persons permitted to participate and ballot in said election were also permitted to participate and ballot in an election held at the same time and place among persons selling or claimed to be selling the Los Angeles Times, a publication of the Times-Mirror Co., a corporation; that each and all of the persons participating in the election among news vendors selling the Los Angeles Examiner, published by Objector, were permitted to so participate and ballot upon the erroneous claim that they were employees of Objector. That nevertheless a substantial portion of said persons were also permitted to participate in said election held at the same time and place among news vendors selling the Los Angeles Times, published by Times-Mirror Co. That said persons were permitted to participate and ballot in said election upon the claim that they were employees of Times-Mirror Co. That a substantial number of the persons engaged in selling the Los Angeles Examiner, published by Objector,

also engaged at the same time and at the same place in the selling of said Los Angeles Times. That said Los Angeles Times and said Times-Mirror Co. are and at all times concerned herein have been competitors of Objector. That in such vending activities such persons are subject to the control and direction of neither Objector or of said Times-Mirror Co. and are not employees of either Objector or Times-Mirror Co. That said election report served on Objector on September 2, 1941, is invalid and void, in that it purports to report on the result of an election held among alleged employees of Objector and a substantial number of said persons were at the same time claimed by the National Labor Relations Board to be employees of Times-Mirror Co. That said persons cannot be the employees of Objector and at the same time be employees of Times-Mirror Co.

12. That the action of the National Labor Relations Board in ordering said election and ballot and in conducting said election and ballot and the rendering of a purported election report thereon was and is a wholly illegal attempt by said Board to force upon Objector, as employees, a group of persons engaged in the independent business of vending newspapers and periodicals. That a substantial number of said persons sell not only the Los Angeles Examiner, published by Objector, but at the same time and at the same place also sell the Los Angeles Times, a newspaper published for sale in competition with said Los Angeles Examiner. That some of the persons balloting at said

election also sell the Saturday Evening Post, published by the Curtis Publishing Company; the Liberty Magazine, published by Macfadden Publications, Incorporated; the Collier's Magazine, published by Crowell Publishing Company; the Time Magazine, published by Time, Inc.; the Life Magazine, published by Time, Inc., and other magazines, periodicals and newspapers. That said persons carry on their activities of selling said magazines, periodicals and newspapers at the same time and place that they sell said Los Angeles Examiner. That the National Labor Relations Board may not legally impose upon Objector the obligations, duties and responsibilities of an employer in respect of persons performing on behalf of many other corporations the same news vending activities which they perform in connection with the newspaper published by Objector.

13. That said election and ballot and the purported election report rendered thereon was and is wholly invalid and void, in that the persons participating in said election were permitted to participate therein upon the wrongful and erroneous ground that they were employees of Objector and were also permitted to participate in an election held at the same time and place among alleged employees of Times-Mirror Co. That none of said persons should have been permitted to participate in an election as purported employees of two corporations, and in permitting such participation said purported election was rendered wholly illegal and void, in that none of said persons can

render services as employee of Objector and during the same hours and at the same place render services as employee of Times-Mirror Co.

14. That said Election Report and the findings therein do not represent or evidence a designation or selection of a representative or representatives for the purposes of collective bargaining or otherwise by a majority of persons claimed by the Board to be employees in a unit appropriate for such or any purposes.

15. That the unit defined by the Board for the purposes of said election and ballot is not and was not an appropriate unit within the provisions of the National Labor Relations Act.

16. That the National Labor Relations Board, in prescribing qualifications for persons entitled to participate in said election and ballot and in conducting said election and ballot, arbitrarily and without cause excluded therefrom all persons engaged in selling the Los Angeles Examiner for less than four hours per day, no matter where such person engaged in such selling activities or how long such selling activities had continued.

17. That the National Labor Relations Board, in prescribing qualifications for persons entitled to participate in said election and ballot and in conducting said election and ballot, arbitrarily and without cause excluded all persons engaged in selling the Los Angeles at "spots" where such selling had not continued for a consecutive period of six months, regardless of how long that particular person had been selling at other "spots" and re-

gardless of how many days per week or hours per day such person sold the Los Angeles Examiner.

18. That the National Labor Relations Board, in prescribing qualifications for persons entitled to participate in said election and ballot and in conducting said election and ballot, arbitrarily and without cause excluded all persons selling Los Angeles Examiner for less than five days per week, regardless of where, how long or how many hours per day such selling activity had been carried on.

19. That the National Labor Relations Board, in prescribing qualifications for persons entitled to participate in said election and ballot and in conducting said election and ballot, arbitrarily and without cause excluded all persons selling the Los Angeles Examiner who had been so engaged for thirty days or less.

20. That the National Labor Relations Board, in prescribing qualifications for persons entitled to participate in said election and ballot and in conducting said election and ballot, arbitrarily and without cause excluded all persons selling the Los Angeles Examiner in the Los Angeles metropolitan area but engaged in selling outside the city limits of Los Angeles.

21. That the National Labor Relations Board, in prescribing qualifications for persons entitled to participate in said election and ballot and in conducting said election and ballot, arbitrarily and without cause excluded all persons who otherwise sold the Los Angeles Examiner but who, for any reason except illness or vacation, were not selling on January 9, 1941.

22. That the National Labor Relations Board, in prescribing qualifications for persons entitled to participate in said election and ballot and in conducting said election and ballot arbitrarily and without cause excluded all persons who had begun to sell the Los Angeles Examiner since January 9, 1941.

23. That in determining the purported result of said election and ballot, said Board failed to count the ballots of all persons claimed by the Board to be entitled to vote and who did vote at said election and ballot.

24. That the National Labor Relations Board has no jurisdiction over Objector in that the National Labor Relations Act imposes jurisdiction in said Board only over persons occupying the relationship of employer and employee. That the relationship existing between the persons participating and balloting in said election and Objector is a vendor-vendee relationship between a manufacturer of goods, to wit, the Objector and persons buying such goods at wholesale for retail sale to the members of the general public. That the ordering of said election, the conducting thereof by the Board and the rendering of a purported Election Report thereon is in pursuance of an unlawful and illegal attempt by the Board to force the Objector to adopt a specific method of distribution of its product to the public, i.e., to force the Objector to distribute the same through employees rather than through independent merchandisers or news vendors as is now and has for many years in the past, been the usual and customary method

of distributing newspapers. That the ordering of said election, the conducting thereof by the Board and the rendering of a purported Election Report thereon is in pursuance of an illegal and unlawful attempt by the Board to impose the wishes and desires of the Board upon the Objector against its judgment and in defiance of its legal rights, in a matter relating solely to business practices and procedure. That such attempted arrogation of authority by the Board is wholly illegal and unlawful, and beyond the jurisdiction of the Board and in defiance of the pronouncement of the Supreme Court of the United States in the case of The Associated Press v. National Labor Relations Board, 301 U. S. 103, 132, 81 L. Ed. 953, 960, that "The Act (National Labor Relations Act) does not compel the petitioner (The Associated Press) to employ anyone."

25. That such attempted arrogation of power by the Board abridges the freedom of the Press guaranteed Objector by the First Amendment to the Constitution of the United States of America and seeks to and tends to and does unlawfully and illegally restrain, coree, and regulate the free dissemination of news to the public by the Objector, and to abridge the freedom of speech and the freedom of the Press guaranteed to Objector by said First Amendment to the Constitution of the United States.

26. That objection is also made to the destruction of any or all of the ballots marked or claimed to have been marked in said election.

Wherefore, Objector prays that said "Election Report" rendered herein be rejected and ordered stricken from the records and files of this proceeding and that said purported ballot conducted at Pacific Electric Theatre, 627 South Los Angeles Street, Los Angeles, California, on May 15, 1941, between the hours of 9:00 A. M. and 5:00 P.M. be declared null and void and of no force and effect.

Dated at Los Angeles, California, this 5th day of September, 1941.

LAWLER, FELIX & HALL,
A. LAURENCE MITCHELL,
JOHN M. HALL,
By /s/ JOHN M. HALL,
Attorneys for Hearst Publications, Incorporated, Los Angeles Examiner Department, 800 Standard Oil Building, Los Angeles, California.

[Title of Board and Causes.]

Case No. R-1926

REPORT ON OBJECTIONS

This matter comes on before the Regional Director on the Objections to the Conduct of the Ballot and to the Election Report of Hearst Publications Incorporated, Los Angeles Examiner Department. The said Objections of Hearst Publications Incorporated, Los Angeles Examiner Department cover certain matters relating to the conduct of

the ballot held on May 15, 1941, among employees of Hearst Publications Incorporated, Los Angeles Examiner Department.

The undersigned has investigated the matters raised by the Objections to the conduct of the Ballot and to the Election Report and hereinafter sets forth his findings in connection therewith.

The undersigned has investigated the allegations raised in paragraphs number 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 24 and 25, and finds these allegations are based upon facts which have been considered by the Board in its Direction of Election. The matters once having been before the Board and determined by it, the undersigned hereby overrules the objections in the paragraphs specified.

The undersigned has investigated the matters raised by the Objections to the Conduct of the Ballot and to the Election Report which appear in paragraph 11. That portion of the Objection quoted hereafter is considered at this time by the undersigned:

> "11. That in the conduct of said election and ballot a substantial number of the persons permitted to participate and ballot in said election were also permitted to participate and ballot in an election held at the same time and place among persons selling or claimed to be selling the Los Angeles Times, a publication of the Times-Mirror Co."

The elections described were held at the same time and place under authority vested in the under-

signed by the Rules and Regulations of the National Labor Relations Board, and the undersigned finds the allegations contained in the paragraph, as quoted in the foregoing, raise no substantial or material issue regarding the conduct of the balloting, and are hereby overrule. The undersigned finds the remainder of paragraph 11, that section not included in the above-quoted excerpt, is based upon facts which have been considered by the Board in its Direction of Election. The matter once having been before the Board and determined by it, the undersigned hereby overrules the objection in that portion of paragraph 11.

The undersigned has reviewed the Objection to the Conduct of the Ballot and to the Election Report and finds in paragraph 14 the following objection:

> "14. That said Election Report and the findings therein do not represent or evidence a designation or selection of a representative or representatives for the purposes of collective bargaining or otherwise by a majority of persons claimed by the Board to be employees in a unit appropriate for such or any purposes."

The undersigned overrules the objection in paragraph 14 in that the objection misconceives the purpose of the Election Report and has brought up a matter which raises no substantial or material issue regarding the conduct of the ballot.

The undersigned has reviewed the Objections to the Conduct of the Ballot and to the Election Re-

port and finds in paragraph 23 the following objection:

> "23. That in determining the purported result of said election and ballot, said Board failed to count the ballots of all persons claimed by the Board to be entitled to vote and who did vote at said election and ballot."

The undersigned finds the allegation contained in paragraph 23 of the Objections to the Conduct of the Ballot and to the Election Report has in no way raised a substantial or material issue regarding the conduct of the balloting and is hereby overruled.

The undersigned has reviewed the Objection to the Conduct of the Ballot and to the Election Report and finds in paragraph 26 the following objection:

> "26. That objection is also made to the destruction of any or all of the ballots marked or claimed to have been marked in said election."

The undersigned has reviewed the objection and finds the Objections to the Conduct of the Ballot and to the Election Report filed by Hearst Publications, Incorporated, Los Angeles Examiner Department, makes needless this objection in that said objections are anticipated and provided for in the Election Report in a paragraph which states:

> "Unless objections to this Report are filed within five days after receipt thereof, the Regional Director will destroy all marked ballots in this election."

Objections having been received within the 5-day period above mentioned, no further consideration is given by the undersigned to the objection in paragraph 26.

Dated: September 8, 1941.

[Seal] /s/ WM. R. WALSH,
Director National Labor Relations Board Twenty-first Region.

[Title of Board and Causes.]

Case No. R-1926

SUPPLEMENTAL DECISION and DIRECTION

Statement of the Case

On January 9, 1941, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Elections[1] in the above-entitled proceedings.[2] Pursuant to the Direction of Elec-

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[1] 28 N.L.R.B., No. 151.

[2] On May 15, 1941, Hearst Publications, Incorporated, (Los Angeles Examiner Department) Los Angeles, California, herein called the Los Angeles Examiner, filed its "Objections to Validity of Direction of Elections and Exceptions to the Same: Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Los Angeles Examiner Unit)," which the Board, by order dated May 26, 1941, overruled.

tions and various amendments thereto,[3] an election by secret ballot was conducted on May 15, 1941, under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California) among employees of the Los Angeles Examiner.[4] On August 29, 1941, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations — Series 2, as amended, issued his Election Report, copies of which were duly served upon the parties.

As to the balloting and its results, the Regional Director reported as follows:

Total on eligibility list	453
Total ballots cast	320
Total ballots challenged	152
Total blank ballots	1
Total void ballots	2
Total ballots not counted	155
Total ballots counted	165

[3] 29 N.L.R.B., No. 16; 29 N.L.R.B., No. 16a; 30 N.L.R.B., No. 110; 30 N.L.R.B., No. 110a; 31 N.L.R.B., No. 115.

[4] Pursuant to the said Decision and Direction of Elections, as amended separate elections were also conducted on May 14 and 15, 1941, among employees of Stockholders Publishing Company, Inc., Hearst Publications, Incorporated, (Los Angeles Evening Herald & Express Department) and The Times Mirror Company, all of Los Angeles, California. On July 30, 1941, the Board issued its Supplemental Decision and Certification of Representatives based upon the results of the said elections (33 N.L.R.B., No. 168).

Total votes for Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.[5] -- 100
Total votes against Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.-- 65

In his Election Report the Regional Director sustained 59 of the challenges, all by the Los Angeles Examiner, and overruled 93, of which 33 were by the Union and 60 by the Los Angeles Examiner. The 93 persons whose ballots were challenged and the challenges overruled are listed in the Appendix hereto annexed.

On or about September 5, 1941, the Los Angeles Examiner filed with the Regional Director Objections to the Conduct of the Ballot and to the Election Report, including, however, no objections to any of the Regional Director's rulings on the challenged ballots. The Union filed no objections to the Election Report. On September 8, 1941, the Regional Director, acting pursuant to Article III, Section 9, of said Rules and Regulations, issued his Report on Objections, copies of which were duly served upon the parties. We have considered the Los Angeles Examiner's Objections and find that they raise no substantial or material issues with respect to the conduct of the ballot. We hereby overrule the said Objections in their entirety.

Since the parties have not objected to the Regional Director's rulings on the challenged ballots we shall direct that the challenged ballots which he

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[5] Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is herein called the Union.

ruled invalid shall not be counted and that those which he ruled valid shall be counted.

DIRECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Hearst Publications, Incorporated (Los Angeles Examiner Department), Los Angeles, California, the Regional Director for the Twenty-first Region (Los Angeles, California) shall, pursuant to the said Rules and Regulations and subject to Article III, Section 9, of said Rules and Regulations, within ten (10) days from the date of this Direction, open and count the ballots of the persons listed in the Appendix hereto annexed, and shall thereafter prepare and cause to be served upon the parties a Supplemental Election Report embodying his findings therein and his recommendations as to the results of the secret ballot.

Signed at Washington, D. C., this 26th day of Sep., 1941.

HARRY A. MILLIS, Chairman
WM. M. LEISERSON, Member

[Seal] NATIONAL LABOR RELATIONS BOARD

APPENDIX

A[6]

Backus, George H.
Bellizi, Angelo
Cameron, John
Dennis, W. R.
Gordon, William
Gorman, Edward
Gray, Harry
Greenfelt, Abraham
Hauser, George
Hansen, Henry
Harrigan, I.
Hayes, Carl
Henderson, Wallace
Jackson, William
Johnson, Charles
McGlynn, J. S.
Mortier, Emil
Negus, C. M.
Norris, Peter A.
Peterson, R. G.
Pollock, Robert
Price, Robert
Richard, T. L.
Shapiro, Sam
Shelly, Percy
Stepakoff, Bennie
Sullivan, Tom
Tabitt, William I.
Wiseman, Harry
Wright, Ruth
Uneman, I.
Domitaeder, Mike

B[7]

Addington, Ralph

C[8]

Colter, Russell
Mandel, Frank
Pacheco, Louis M.
Klaus, Wm.

D[9]

Oliver, Ernest
White, George
Oliver, J. E.
Jenny, Russell
Silk, Ennets

E[10]

Payer, John
Curry, Dorothy

F[11]

Lewis, Elmer
Winland, Chas. W.
Dukels, Max
Tomchen, Meyer
Bailey, Clarence
Renollett, C. M.
Barlett, E. J.
Cleary, John
Crowell, V. J.
Cervello, Alfred
Abourezk, Geo.
Roman, F. O.
Douthit, C.
Margolis, Sam
Thomson, K. R.

F (cont'd.)

Miller, Geo.
Frye, Wm. R.
Ullman, Albert
Russell, Wm. D.
Brown, John L.
Dominguez, E.
Smith, R. E.
Brown, A. T.
Mott, W. G.

G[12]

LaMont, Harry
Curtis, Joe
Fisher, P.
Brodie, Louis
Reyes, Gilbert
Marsh, Wm.
Porter, C. E.
Daly, John
Volk, Chris
Brown, Robt.
Esch, Oscar
Locke, Hans J.
Fields, Harry
Steele, Kenneth
Unger, Chas.
Herrera, Donald
Elmers, Ben
Duron, Armando
Hummel, Carl
Stoermer, Walter
Allen, Wm.
Duron, Daniel

H[13]

Sharp, Oscar B.
Gleeson, G.
Cohen, M.

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[6]The persons listed in this group are all those listed in Appendix II of the Regional Director's Election Report.

[Title of Board and Causes.]

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Vernon S. Green, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 26th day of September 1941, I mailed postpaid, bearing government frank, by registered mail, a copy of the Supplemental Decision and Direction to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union, No. 75, C.I.O.
Att.: Messrs. Pat Comorre, Gene L. Alley, and Roy Eley
Room 304, 212 W. 3rd St.
Los Angeles, Calif.

Gallagher, Wirin & Johnson
257 South Spring St.
Los Angeles, Calif.

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[7]The person listed in this group is he person listed in Appendix III of the Election Report.

[8]The persons listed in this group are those listed in Appendix VIII of the Election Report.

[9]The persons in this group are those listed in Appendix X of the Election Report.

[10]The persons listed in this group are those listed in Appendix XI, Part B, of the Election Report.

[11]The persons listed in this group are those listed in Appendix XII, Part B, of the Election Report.

[12]The persons listed in this group are those listed in Appendix XIII of the Election Report.

[13]The persons listed in this group are three of those listed in Appendix XVIII of the Election Report.

Stockholders Publishing Company
12th & Los Angeles Sts.
Los Angeles, Calif.
L. B. Binford and Howard M. Binford, Esqs.
606 S. Hill St.
Los Angeles, Calif.
Hearst Publications, Inc. (Los Angeles Evening Herald & Express Depts.)
1243 Trenton St.
Los Angeles, Calif.
Flint and McKay
Att.: Messrs. Edward L. Compton and Donald W. Hamblin
458 S. Spring St.
Los Angeles, Calif.
Hearst Publications (Los Angeles Examiner Dept.)
410 Hearst Bldg.
San Francisco, Calif.
Lawler, Felix and Hall
Att.: Messrs. John M. Hall, Marcus Matson and A. L. Mitchell
605 W. Tenth St.
Los Angeles, Calif.
The Times Mirror Co.
2nd and Springs Streets
Los Angeles, Calif.
Cosgrove & O'Neil
Att.: Messrs. T. B. Cosgrove and F. B. Yeakim, Jr.
458 S. Spring St.
Los Angeles, Calif.

VERNON S. GREEN

Subscribed and sworn to before me this 26th day of September, 1941.

[Seal] IRVING HELBLING

My commission expires Sept. 2, 1945.

[Title of Board and Causes.]

Case No. R-1926

SUPPLEMENTAL ELECTION REPORT

Pursuant to the Rules and Regulations of the National Labor Relations Board—Series 2, as amended, Article III, Section 9, the undersigned hereby makes the following Supplemental Election Report:

On January 9, 1941, the National Labor Relations Board directed that an election by secret ballot be conducted among certain employees of Hearst Publications Inc., Los Angeles Examiner Department, and authorized and directed the undersigned to conduct said secret ballot.

Pursuant to said Direction of Election, the undersigned conducted said secret ballot in Los Angeles, California, on May 15, 1941.

The ballots used in the conduct of said secret ballot were in the form attached to this Report as Appendix "A" and made a part hereof. Said secret ballot was conducted in a manner conforming to the directions for the conduct of said secret ballot heretofore issued by the National Labor Relations Board, and full opportunity was accorded to all parties to this investigation to participate therein and to make challenges.

At the election the Company and the Union challenged the ballots of certain of the persons who presented themselves to vote at the election. Thereafter, the Regional Director considered the challenges of both parties, and on August 29, 1941, issued his Election Report, which was served upon the parties.

On September 5, 1941, the Hearst Publications Inc., Los Angeles Examiner Department, herein called the "Company," filed Objections to the Election Report.

On September 8, 1941, the Regional Director issued a Report on Objections, copies of which were duly served upon the parties. On that date, in accordance with the Rules and Regulations, Article III, Section 9, the Regional Director forwarded the Election Report, the Objections, and the Report on Objections to the Board in Washington.

On September 26, 1941, the Board issued its Supplemental Decision and Direction, in which the Board directed the Regional Director for the Twenty-first Region to open and count the ballots of the employees listed in Appendix "B" attached hereto and made a part hereof.

On October 1, 1941, pursuant to the said Supplemental Decision and Direction, the Regional Director for the Twenty-first Region did open and count the ballots of the individuals above referred to, in the presence of observers from each of the two parties, and at the conclusion of the count a memorandum of the count was entered into by the

parties. The memorandum is referred to as Appendix "S" of this report and is attached hereto and made a part hereof.

The undersigned hereby certifies that said secret ballot was fairly and impartially conducted and that the ballots cast were duly and fairly counted under his supervision, and that statements to such effect from the tellers have been filed with the undersigned.

Your attention is called to Article III, Section 9 of the Rules and Regulations—Series 2, as amended, issued by the National Labor Relations Board, which provides that within five (5) days after the serving of the Election Report, the parties to the proceeding may file with the Regional Director any objection to the ballot or the Election Report.

Unless objections to this report are filed within five (5) days after the receipt thereof, the Regional Director will destroy all the marked ballots in this election.

The undersigned hereby makes his findings with respect to the results of said secret ballot:

(Balloting and results as shown in Supplemental Decision and Direction issued by the National Labor Relations Board September 26, 1941:

Total on eligibility list	453
Total ballots cast	320
Total ballots challenged	152
Total blank ballots	1
Total void ballots	2

Total ballots not counted	155
Total ballots counted	165
Total votes for Los Angeles Newsboys Local Industrial Union No. 75, CI.O.	100
Total votes against Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.	65

In his Election Report the Regional Director sustained 59 of the challenges, all by the Los Angeles Examiner, and overruled 93, of which 33 were by the Union and 60 by the Los Angeles Examiner.)

Results of tabulation and count of ballots on October 1, 1941:

Total on eligibility list	453
Challenged ballots ordered counted by the Board	93
Challenged ballots ordered not counted by the Board	59
Challenged ballot envelopes opened	93
Challenged ballots contained therein	94
Challenged "Times" ballots sealed in challenged "Examiner" envelopes	2
Challenged "Times" ballot sealed in same envelope with valid "Examiner" ballot	1
Ballots voided because they were "Times" ballots improperly sealed in "Examiner" envelopes	3
Total challenged ballots counted	91
Ballots changing previous total	1
New total of total ballots cast	*321

*[At the original counting 165 ballots were counted, 1 was not counted because it was blank, 2 were not counted because they were void, and 152

were not taken from their challenge envelopes. Since 2 ballots were included in one of the 152 envelopes the total ballots challenged now becomes 153, thus changing the total ballots cast from 320 to 321.]

On the basis of the foregoing, the following is the tabulation and count of ballots and report of tabulation and count of challenged ballots:

Total on eligibility list	453
Total ballots cast	321
Total ballots challenged	153
Total challenged ballots counted	91
Opened challenged ballots not counted	3
Total challenged ballots not counted	62
Total votes previously counted for Los Angeles News Boys Industrial Union No. 75, C.I.O.	100
Total challenged ballots ordered counted by Board for Los Angeles News Boys Industrial Union No. 75, C.I.O.	61
Total votes for Los Angeles News Boys Industrial Union No. 75, C.I.O.	161
Total votes previously counted against Los Angeles News Boys Industrial Union No. 75, C.I.O.	65
Total challenged ballots ordered counted by Board against Los Angeles News Boys Industrial Union No. 75, C.I.O.	30
Total votes against Los Angeles News Boys Industrial Union No. 75, C.I.O.	95

Dated: October 3, 1941.

[Seal] /s/ WILLIAM R. WALSH, Director
Twenty-first Region
National Labor Relations
Board
Los Angeles, California

(Copy)

INTER-OFFICE COMMUNICATION
NATIONAL LABOR RELATIONS BOARD

Date October 9, 1941

TO—G. L. Patterson, Director of Field Division
From—William R. Walsh, Director 21st Region
Subject—Hearst Publications Inc., Los Angeles Examiner Department.

OBJECTIONS NOT FILED

This is to certify that no Objections to the Supplemental Election Report in the above case have been filed by any of the parties within the 5 days provided therefor in Article II, Section 9, of the Rules and Regulations—Series 2, as amended.

We are attaching hereto the original of the Supplemental Election Report, the Affidavit of Service, Registered Receipts and Return Receipt cards.

/s/ W R W
WILLIAM R. WALSH
Director

GVS
Encl/2

[Title of Board and Causes.]

Case No. R-1926

CERTIFICATION OF REPRESENTATIVES

On January 9, 1941, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Elections in the above-entitled proceedings.[1] Pursuant to the Direction of Elections and various amendments there,[2] an election by secret ballot was conducted on May 15, 1941, under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California), among employees of Hearst Publications, Incorporated (Los Angeles Examiner Department), Los Angeles, California, herein called the Los Angeles Examiner.[3] On September 26, 1941, the Board issued a Supplemental Decision and Direction[4] which, inter alia, directed the Regional Director to open and count the challenged ballots cast by 93 persons named in the Supplemental Decision and

[1] 28 N.L.R.B., No. 151.

[2] 29 N.L.R.B., No. 16; 29 N.L.R.B., No. 16a; 30 N.L.R.B., No. 110; 30 N.L.R.B., No. 110a; 31 N.L.R.B., No. 115.

[3] Pursuant to the said Decision and Direction of Elections, as amended, separate elections were also conducted on May 14 and 15, 1941, among employees of Stockholders Publishing Company, Inc., Hearst Publications, Incorporated, (Los Angeles Evening Herald & Express Department) and The Times Mirror Company, all of Los Angeles, California. On July 30, 1941, the Board issued its Supplemental Decision and Certification of Representatives based upon the results of the said elections (33 N.L.R.B., No. 168).

[4] 35 N.L.R.B., No. 179.

Direction. On October 3, 1941, the Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, issued his Supplemental Election Report, copies of which were duly served upon the Los Angeles Examiner and upon Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.

In his Supplemental Election Report the Regional Director reported that on October 1, 1941, he opened and counted the challenged ballots referred to, and that the final tabulation of the result of the balloting was as follows:

Total on eligibility list	453
Total ballots cast	321[5]
Total ballots challenged	153
Total challenged ballots counted	91
Opened challenged ballots not counted	3
Total challenged ballots not counted	62
Total votes for Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.	161
Total votes against Los Angeles Newsboys Local Union No. 75, C.I.O.	95

[5]In the Board's Supplemental Decision and Direction of September 26, 1941, we stated that the Regional Director reported that the ballots cast totaled 320 and that the challenged ballots totaled 152. In his Supplemental Election Report the Regional Director reported that 1 of the challenge envelopes contained 2 ballots, so that in fact 321 ballots had been cast, 153 of which had been challenged. The extra ballot referred to was found to be for an election among employees of another employer and was therefore, as stated below, not counted.

The Regional Director reported that the 3 challenged ballots which were opened pursuant to said Supplemental Decision and Direction but not counted were ballots for an election held among employees of another employer.

No objections to the counting of the challenged ballots or to the Supplemental Election Report have been filed by any of the parties.

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, and pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended,

It Is Hereby Certified that Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., has been designated and selected by a majority of all employees of Hearst Publications, Incorporated (Los Angeles Examiner Department), Los Angeles, California, who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, as their representative for the purpose of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

Signed at Washington, D. C., this 20 day of October, 1941.

HARRY A. MILLIS
Chairman
WM. M. LEISERSON
Member
[Seal] NATIONAL LABOR
RELATIONS BOARD

[Title of Board and Causes.]

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Vernon S. Green, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 20th day of October 1941, I mailed postpaid, bearing government frank, by registered mail, a copy of the Certification of Representatives to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union, # 75, C.I.O.
Att: Pat Comorre, Gene L. Alley & Roy Eley
Room 304, 212 W. 3rd Street
Los Angeles, Calif.

Gallagher, Wirin & Johnson
257 S. Spring Street
Los Angeles, Calif.

Stockholders Publishing Co.
12th & Los Angeles Streets
Los Angeles, Calif.

L. B. Binford and Howard M. Binford
606 S. Hill Street
Los Angeles, Calif.

Hearst Publications, Inc., (Los Angeles Evening Herald & Express Dept.)
1243 Trenton Street
Los Angeles, Calif.

Flint and McKay
Att: Edward L. Compton and Donald W. Hamblin
458 S. Spring Street
Los Angeles, Calif.

Hearst Publications (Los Angeles Examiner Department)
410 Hearst Building
San Francisco, Calif.

Lawler, Felix and Hall
Att: John M. Hall, Marcus Matson and A. L. Mitchell
605 W. Tenth Street
Los Angeles, Calif.

The Times Mirror Co.
2nd & Spring Streets
Los Angeles, Calif.

Cosgrove & O'Neil
Att: T. B. Cosgrove & F. B. Yoakim, Jr.
458 S. Spring Street
Los Angeles, Calif.

/s/ VERNON S. GREEN

Subscribed and sworn to before me this 20th day of October 1941.

[Seal] IRVING HELBLING

My commission expires: Sept. 2, 1945.

BOARD'S EXHIBIT No. 1-A

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI C1840

Date Filed 8/28, 1941
209 inv.

In the Matter of THE HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD AND EXPRESS DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that The Hearst Publications, Incorporated. (Los Angeles Evening Herald and Express Department) 1243 Trenton, Los Angeles, Calif. has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that said company, through its officers and agents, has refused to recognize and bargain with Los Angeles Newsboys Local Industrial Union

No. 75, C.I.O. since August 12, 1941, the date on which such request was made by the union; and that the company has at all times since that date refused to meet with and recognize the union, although said union was, on July 30, 1941, certified by the National Labor Relations Board as the sole agent in collective bargaining for all newsboys employed by the company, a violation of Section 8, subsection (5) of the Act.

By this refusal to meet with the bargaining agent designated by the National Labor Relations Board, and by other acts and statements, it by its officers and agents, has interfered with and restrained its employees in the exercise of the rights guaranteed them in Section 7, a violation of Section 8, subsection (1) of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS
LOCAL INDUSTRIAL
UNION NO. 75, CIO
PAT COMORRE
By: Pat Comorre, Secretary
212 W. 3rd St., Los Angeles, Calif.
MUtual 5747

Subscribed and sworn to before me this 28th day of August, 1941. At Los Angeles, Calif.

ROGER G. McGUIRE,
Field Examiner
National Labor Relations Board
U. S. Post Office & Court House Bldg.
Los Angeles, California.

BOARD'S EXHIBIT No. 1-B

United States of America
National Labor Relations Board

I, Beatrice M. Stern, Executive Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

ORDER CONSOLIDATING CASES

In the Matter of The Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. Case No. XXI-C-1840.

Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. Case No. XXI-C-1843

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor

Relations Board to be affixed this 24th day of October A. D. 1941, at Washington, D. C.

[Seal] BEATRICE M. STERN
Executive Secretary.

[Title of Board and Causes.]

Cases Nos. XXI-C-1840, 1843

ORDER CONSOLIDATING CASES

Charges, pursuant to Section 10(b) of the Act, having been filed in the above-entitled cases, and the Board having duly considered the matter and deeming it necessary in order to effectuate the purposes of the National Labor Relations Act,

It Is Hereby Ordered, pursuant to Article II, Section 36(b), of National Labor Relations Board Rules and Regulations—Series 2, as amended, that these cases be, and they hereby are, consolidated.

Dated, Washington, D. C., October 23, 1941.

By direction of the Board:

[Seal] BEATRICE M. STERN
Executive Secretary

BOARD'S EXHIBIT No. 1-C

Case No. XXI-C-1840

[Title of Board and Cause.]

COMPLAINT

It having been charged by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., chartered by the Congress of Industrial Organizations, that

Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), hereinafter called "Respondent," has engaged in and is engaging in at Los Angeles, California, certain unfair labor practices affecting commerce as set forth and defined in National Labor Relations Act, approved July 5, 1935, 49 Stat. 449, hereinafter referred to as "Act," the National Labor Relations Board, by its Regional Director for its Twenty-first Region, designated as agent of said Board by Article IV, Section 1, subsection (e), and Article II, Section 5 of its Rules and Regulations, Series 2, as amended, hereby issues its Complaint and alleges the following:

1. Hearst Publications, Incorporated, is and, at all times herein after referred to, has been a corporation, organized and existing under and by virtue of the laws of the State of California. Said corporation has its principal office and place of business in San Francisco, California. It is engaged in the publication, distribution and sale of various daily and Sunday newspapers including Los Angeles Evening Herald & Express, hereinafter referred to as "Herald."

2. The Herald is an evening paper published daily except Sunday at its plant in Los Angeles, California. Said paper is distributed throughout the State of California but principally in the metropolitan area of Los Angeles. In addition a considerable portion of its daily circulation is sold and distributed outside the State of California.

3. Respondent in the conduct of its above-described business of publishing, selling, and distributing the Herald as aforesaid, causes and continuously has caused large quantities of raw materials used in its business, including specifically but without limitation thereby, newsprint and mats to be transported into the State of California from other states of the United States and from foreign countries.

4. Respondent in the conduct of its aforedescribed business of publishing, selling, and distributing the Herald daily supplies news to and daily receives news from several well-known news services which gather and disseminate news nationally and internationally. Said Respondent in the conduct of this business likewise daily receives and publishes numerous feature services, the material for many of which is prepared and originates in states of the United States other than the State of California. Further, said Respondent in the conduct of this business daily publishes in substantial amounts advertising originating outside the State of California.

5. Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., hereinafter called "Union," is a labor organization within the meaning of Section 2, subsection (5) of the Act.

6. A unit for the purposes of collective bargaining, composed of all employees of Respondent who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, ex-

cluding bootjackers, temporary, casual, and part-time newsboys, would insure to such employees of Respondent the full benefit of their right to self-organization and to collective bargaining and would otherwise effectuate the policies of the Act. Said unit is, therefore, appropriate for the purposes of collective bargaining between the representatives of such employees of Respondent and Respondent.

7. By May 14, 1941, or before that date, a majority of the employees of Respondent within the unit set forth in paragraph 6 had designated the Union as their representative for the purpose of bargaining collectively with the Respondent with respect to their compensation, hours of employment and other conditions of employment. This majority status of the Union within this unit has continued up to and including the date of this Complaint.

8. Since on or about August 12, 1941, Respondent, while engaged in its aforedescribed business at Los Angeles, California, has continuously failed and/or refused and does now fail and/or refuse to bargain collectively in good faith with the Union.

9. By this continuous failure and/or refusal to bargain with the Union as set out in the immediately preceding paragraph, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of the Act.

10. The acts of Respondent set out in paragraph 8 occurring in connection with the operation of its business as described in paragraphs 1, 2, 3, and 4

have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

11. The acts of Respondent set out in paragraph 8 constitute unfair labor practices affecting commerce and the free flow of commerce within the meaning of Section 8, subsections (1) and (5) and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on the 25th day of October, 1941, issues its Complaint against Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), Respondent herein.

NOTICE OF HEARING

Please Take Notice That on the 10th day of November, 1941, in Room 808, U. S. Post Office and Court House Building, Los Angeles, California, at 10:00 o'clock in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with Article IV and Article II, Section 23, of its Rules and Regulations, Series 2, as amended, on the allegations of the Complaint hereinabove set forth, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are Further Notified that you have the right to file with the undersigned, acting in this matter as the agent of the National Labor Relations Board,

an answer to the foregoing Complaint, on or before the 7th day of November, 1941.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 2, as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations, Series 2, as amended.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown directs that a given exhibit need not be duplicated.

In Witness Whereof, the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by its Regional Director for its Twenty-first Region on the 25th day of October, 1941.

[Seal] WM. R. WALSH,
Regional Director, Twenty-first Region, National Labor Relations Board, 808 U. S. Postoffice & Courthouse, Los Angeles, California.

BOARD'S EXHIBIT No. 1-G

[Title of Board and Cause.]

Case No. XXI-C-1840

MOTION TO DISMISS COMPLAINT

Comes now Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and appearing for itself alone, and appearing specially and not generally, and only for the purpose of this motion, moves to dismiss the complaint issued herein by the National Labor Relations Board through its Regional Director for the Twenty-first Region.

Said motion is made on each and all of the following grounds:

1. That the National Labor Relations Board has no jurisdiction over respondent.

2. That respondent is not engaged in commerce among the several states, or between the District of Columbia or any territory of the United States and any state or other territory or between any foreign country or any state, territory or the District of Columbia or within the District of Columbia or any territory or between points in the same state or territory or any other state or territory or the District of Columbia or any foreign country; and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

3. That no member of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. is an employee of respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

4. That the persons particularly referred to in paragraph 6 of the complaint, to-wit, full-time newsboys and checkmen, operating within Los Angeles, California, in so far as their news vending activities are concerned, are not employees of, nor is any one of them an employee of, this respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

5. That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., and the full-time newsboys and checkmen mentioned in the complaint are, in the conduct of their respective news vending activities, engaged solely in intrastate commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

6. That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. and the full-time newsboys and checkmen referred to in the complaint are not, in the conduct of their news vending activities, engaged in interstate commerce, or in any business activity having a close, intimate, substantial, or any relation to trade, traffic or commerce among the several states or the territories of the United States and foreign countries, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

7. That no refusal of respondent to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. can burden or obstruct commerce, and such refusal can not and has not led or tended to lead, and can not and does not now, and will not, lead or tend to lead to a labor dispute burdening or

obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

8. That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., or of the full-time newsboys and checkmen, or any of them, can or will burden or obstruct commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

9. That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., or of the full-time newsboys and checkmen, or any of them, can or will lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

10. That the National Labor Relations Board has no jurisdiction over the relations of this respondent with persons engaged in the independent business of vending the newspapers published by this respondent.

This motion is made by respondent in reliance upon the rights granted by Article II, Sections 14 to 18, inclusive, of Rules and Regulations, Series 2, as amended, of the National Labor Relations Board, and its right to make this motion, or to object to any ruling upon the same shall not be deemed waived by the filing of an answer or by other participation by this respondent in the proceedings before the Trial Examiner or the Board.

Dated at Los Angeles, California, this 7th day of November, 1941.

FLINT & MACKAY,
By EDWARD L. COMPTON,
Attorneys for Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department).

BOARD'S EXHIBIT No. 1-H

[Title of Board and Causes.]

Case No. XXI-C-1840

ANSWER OF HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT)

Comes now Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) hereafter called "respondent", and reserving all rights asserted in all pleadings and documents heretofore filed by it in Case No. XXI-R-928 and/or Case No. R-1926, and under its Motion to Dismiss Complaint filed concurrently herewith, files this its answer to the complaint issued herein by National Labor Relations Board through its Regional Director for the Twenty-First Region.

1. Admits the allegations of paragraph 1 of the complaint, but in this connection alleges that the Los Angeles Evening Herald & Express is pub-

lished at its plant situated in Los Angeles, California, in which plant no other business is conducted, and that the publication, distribution and sale of the Los Angeles Evening Herald & Express is a separate business enterprise of the Los Angeles Evening Herald & Express Department of Hearst Publications, Incorporated, with which no other department of Hearst Publications, Incorporated has any connection.

2. Answering paragraph 2 of the complaint, respondent denies that a considerable or any substantial portion of its daily circulation is sold or distributed outside the State of California, and in this connection alleges that on the average not to exceed 37/100 of 1% of its daily circulation is sold and distributed outside the State of California.

3. Answering paragraph 3 of the complaint, respondent admits that in the conduct of its business respondent uses large quantities of newsprint and mats, all of which are purchased without the State of California; denies specifically each and every allegation of paragraph 3 of the complaint not in this paragraph specifically admitted.

4. Admits the allegations of paragraph 4 of the complaint.

5. Denies specifically the allegations of paragraph 5 of the complaint.

6. Denies specifically the allegations of paragraph 6 of the complaint.

7. Denies specifically the allegations of paragraph 7 of the complaint.

8. Admits the allegations of paragraph 8 of the

complaint but in explanation of this admission alleges that it has refused to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., upon the advice of competent counsel and in the bona fide belief that the National Labor Relations Board had or has no jurisdiction over respondent with respect to respondent's relationship with its newsvendors, who are independent contractors and not employees.

9. Answering paragraph 9 of the complaint, respondent denies that by reason of continuous or any failure and or refusal to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as alleged in paragraph 8 of the complaint, respondent has engaged in or is engaging in an unfair labor practice, or unfair labor practices, within the meaning of Section 8, subsection (1) or Section 8, subsection (5) of the National Labor Relations Act.

10. Denies specifically the allegations of paragraph 10 of the complaint.

11. Denies specifically the allegations of paragraph 11 of the complaint.

For a second, separate and further defense and answer, respondent alleges:

That the National Labor Relations Board has no jurisdiction over respondent.

For a third, separate and further defense and answer, respondent alleges:

That respondent is not engaged in commerce among the several states, or between the District

of Columbia or any territory of the United States and any state or other territory or between any foreign country or any state, territory or the District of Columbia or within the District of Columbia or any territory or between points in the same state or territory or any other state or territory or the District of Columbia or any foreign country, and, therefore, the National Labor Relations Board has no jurisdiction of respondent.

For a fourth, separate and further defense and answer, respondent alleges:

That no member of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. is an employee of respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a fifth, separate and further defense and answer, respondent alleges:

That the persons particularly referred to in paragraph 6 of the complaint, to-wit, full-time newsboys and checkmen, operating within Los Angeles, California, in so far as their news vending activities are concerned, are not employees of, nor is any one of them an employee of, this respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a sixth, separate and further defense and answer, respondent alleges:

That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., and the full-time newsboys and checkmen mentioned in the complaint are, in the conduct of their respective

news vending activities, engaged solely in intrastate commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a seventh, separate and further defense and answer, respondent alleges:

That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. and the full-time newsboys and checkmen referred to in the complaint are not, in the conduct of their news vending activities, engaged in interstate commerce, or in any business activity having a close, intimate, substantial, or any relation to trade, traffic or commerce among the several states or the territories of the United States and foreign countries, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For an eighth, separate and further defense and answer, respondent alleges:

That no refusal of respondent to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. can burden or obstruct commerce, and such refusal can not and has not led or tended to lead, and can not and does not now, and will not lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a ninth, separate and further defense and answer, respondent alleges:

That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., or of the full-time news-

boys and checkmen, or any of them, can or will burden or obstruct commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over rsepondent.

For a tenth, separate and further defense and answer, respondent alleges:

That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., or of the full-time newsboys and checkmen, or any of them, can or will lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For an eleventh, separate and further defense and answer, respondent alleges:

That the National Labor Relations Board has no jurisdiction over the relations of this respondent with persons engaged in the independent business of vending the newspapers published by this respondent.

Wherefore, respondent prays that the complaint herein be dismissed.

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT), a Corporation
1243 Trenton Street,
Los Angeles, California.

FLINT & MAC KAY
By EDWARD L. COMPTON
Attorneys for Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department)

(Duly verified.)

BOARD'S EXHIBIT No. 2-A

United States of America

Before the National Labor Relations Board
21st Region

Case No. XXI, C 1843
Date filed 9/3/1941

627 involved
3000 total employees

In the Matter of TIMES-MIRROR COMPANY AND LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Times-Mirror Company, 202 W. 1st Street, Los Angeles, California has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that said Company, through its officers and agents, has refused to recognize and bargain with

Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., since September 3, 1941, the date on which such request was made by the Union; and that the Company has at all times since that date refused to meet with and recognize the Union, although said Union was, on July 30, 1941, certified by the National Labor Relations Board as the sole agent in collective bargaining for all newsboys employed by the Company, a violation of Section 8, subsection (5) of the Act.

By this refusal to meet with the bargaining agent designated by the National Labor Relations Board, and by other acts and statements, it by its officers and agents, has interfered with and restrained its employees in the exercise of the rights guaranteed them in Section 7, a violation of Section 8, subsection (1) of the Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS
LOCAL INDUSTRIAL
UNION NO. 75, C. I. O.
By PAT COMORRE,
Pat Comorre, Secretary
212 W. 3rd St.,
Los Angeles, Calif.
MUtual 5747

Subscribed and sworn to before me this 3 day of September, 1941. At Los Angeles, Calif.

ROGER G. McGUIRE,
Field Examiner, National Labor Relations Board, 21st Region, Los Angeles, Calif.

BOARD'S EXHIBIT No. 2-C

[Title of Board and Causes.]

Case No. XXI-C-1843

COMPLAINT

It having been charged by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., chartered by the Congress of Industrial Organizations, that The Times-Mirror Company, hereinafter called "Respondent," has engaged in and is engaging in at Los Angeles, California, certain unfair labor practices affecting commerce as set forth and defined in National Labor Relations Act, approved July 5, 1935, 49 Stat. 449, hereinafter referred to as "Act," the National Labor Relations Board, by its Regional Director for its Twenty-first Region, designated as agent of said Board by Article IV, Section 1, subsection (c), and Article II, Section 5 of its Rules and Regulations, Series 2, as amended, hereby issues its Complaint and alleges the following:

1. Respondent is and, at all times hereinafter referred to, has been a corporation organized and existing under and by virtue of the laws of the

State of California. Said Respondent has its principal office and place of business in Los Angeles, California. It is engaged in the publication, distribution, and sale of "The Los Angeles Times," hereinafter referred to as "Times," published daily including Sunday, at its plant in Los Angeles, California.

2. The Times is distributed throughout the State of California but principally in the metropolitan area of Los Angeles. In addition a considerable portion of its daily and Sunday circulation is sold and distributed outside the State of California.

3. Respondent in the conduct of its above-described business causes and continuously has caused large quantities of raw materials used in its business, including specifically but without limitation thereby, newsprint and mats to be transported in to the State of California from other states of the United States and from foreign countries.

4. Respondent in the conduct of its aforedescribed business daily supplies news to and daily receives news from various other newspapers published outside the State of California and certain well known news services which gather and disseminate news nationally and internationally. Said Respondent in the conduct of this business likewise daily publishes numerous feature services received from points located outside the State of California. Further, said Respondent in the conduct of this business daily publishes in substantial amounts

advertising originating outside the State of California.

5. Los Angeles Newsboys Local Industrial Union No. 75, C. J. O., hereinafter called "Union," is a labor organization within the meaning of Section 2, subsection (5) of the Act.

6. A unit for the purposes of collective bargaining composed of all employees of the Repondent who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, excluding temporary newsboys, would insure to such employees of Respondent the full benefit of their right to self-organization and to collective bargaining and would otherwise effectuate the policies of the Act. Said unit is, therefore, appropriate for the purposes of collective bargaining between the representatives of such employees of Respondent and Respondent.

7. By May 15, 1941, or before that date, a majority of the employees of Respondent within the unit set forth in paragraph 6 had designated the Union as their representative for the purpose of bargaining collectively with the Respondent with respect to their compensation, hours of employment and other conditions of employment. This majority status of the Union within this unit has continued up to and including the date of this Complaint.

8. Since on or about September 3, 1941, Respondent, while engaged in its aforedescribed busi-

ness at Los Angeles, California, has continuously failed and/or refused and does now fail and/or refuse to bargain collectively in good faith with the Union.

9. By this continuous failure and/or refusal to bargain with the Union as set out in the immediately preceding paragraph, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of the Act.

10. The acts of Respondent set out in paragraph 8 occurring in connection with the operation of its business as described in paragraphs 1, 2, 3, and 4 have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

11. The acts of Respondent set out in paragraph 8 constitute unfair labor practices affecting commerce and the free flow of commerce within the meaning of Section 8, subsections (1) and (5) and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on the 25th day of October, 1941, issues its Complaint against The Times-Mirror Company, Respondent herein.

NOTICE OF HEARING

Please take notice that on the 10th day of November, 1941, in Room 808, U. S. Post Office and Court House Building, Los Angeles, California, at

10:00 o'clock in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with Article IV and Article II, Section 23 of its Rules and Regulations, Series 2, as amended, on the allegations of the Complaint hereinabove set forth, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are further notified that you have the right to file with the undersigned, acting in this matter as the agent of the National Labor Relations Board, an answer to the foregoing Compliant, on or before the 7th day of November, 1941.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 2, as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations, Series 2, as amended.

Please take notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown directs that a given exhibit need not be duplicated.

In witness whereof, the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by its Regional Director

for its Twenty-first Region on the 25th day of October, 1941.

/s/ WILLIAM R. WALSH

[Seal] William R. Walsh
Regional Director, Twenty-first Region, National Labor Relations Board
808 U. S. Postoffice & Courthouse, Los Angeles, California

BOARD'S EXHIBIT No. 2-G

[Title of Board and Causes.]

Case No. XXI-C-1843

MOTION TO DISMISS COMPLAINT

Comes now The Times-Mirror Company (hereafter called "respondent"), and severing itself from all other persons and appearing specially for the purpose of objecting to the jurisdiction of the National Labor Relations Board, moves to dismiss the complaint issued herein by National Labor Relations Board through its Regional Director for the Twenty-first Region.

Said motion is made on each and all of the following grounds:

1. No one of the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is an employee of respondent.

2. Each and all of the newsboys engaged in the street sales of the Los Angeles Times is and are independent contractors.

3. No question affecting commerce has arisen or

can arise concerning the representation of the alleged employees (said newsboys selling the Los Angeles Times).

4. The National Labor Relations Board has no jurisdiction over respondent or over the business conducted by it.

5. The relations of respondent with the alleged employees (said newsboys selling the Los Angeles Times) are not subject to the jurisdiction of the Board.

6. No claimed labor dispute between respondent and said alleged employees (said newsboys selling the Los Angeles Times) can affect commerce within the meaning of the National Labor Relations Act.

The right to make this motion or to object to any adverse ruling on the same shall not be deemed waived by respondent by any participation by it in the proceedings before the Trial Examiner or the Board or by the filing of an answer herein; the movant relies upon Art. II, Secs. 14-18, inclusive, of Rules and Regulations, Series 2, as amended, of the National Labor Relations Board.

Dated: November 4, 1941.

COSGROVE & O'NEIL,
T. B. COSGROVE,
F. B. YOAKUM, JR.,
By /s/ F. B. YOAKUM, JR.
Attorneys for The Times-Mirror Company

BOARD'S EXHIBIT No. 2-H

[Title of Board and Causes.]

Case No. XXI-C-1843

ANSWER OF THE TIMES-MIRROR COMPANY

Comes now The Times-Mirror Company (hereafter called "respondent"), and severing itself from all other persons, and reserving all rights asserted in all pleadings and documents heretofore filed by it in Case No. XXI-R-1062 and or Case No. R-1925, and under its Motion to Dismiss Complaint filed concurrently herewith, files this, its Answer to complaint issued herein by National Labor Relations Board through its Regional Director for the Twenty-First Region.

1. Admits the allegations of paragraph 1 of the complaint.

2. Admits that the Los Angeles Times is distributed throughout the State of California and principally in the metropolitan area of Los Angeles.

Denies specifically each and every allegation of paragraph 2 of the complaint not in this paragraph specifically admitted.

3. Admits that in the conduct of its business respondent uses large quantities of newsprint and mats, all of which are purchased without the State of California.

Denies specifically each and every allegation of paragraph 3 of the complaint not in this paragraph specifically admitted.

Board's Exhibit No. 2-H—(Continued.)

4. Admits the allegations of paragraph 4 of the complaint.

5. Denies specifically the allegations of paragraph 5 of the complaint.

6. Denies specifically the allegations of paragraph 6 of the complaint.

7. Denies specifically the allegations of paragraph 7 of the complaint.

8. Admits the allegations of paragraph 8 of the complaint, but in explanation of this admission alleges that its refusal to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., was done on advice of competent counsel and in the bona fide belief that the National Labor Relations Board has no jurisdiction over respondent with respect to respondent's relationship with its news vendors, who are independent contractors and not employees.

9. Denies that by reason of continuous or any failure and/or refusal to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as alleged in paragraph 8 of the complaint, respondent has engaged in or is engaging in an unfair labor practice or unfair labor practices within the meaning of Section 8, subsection 1, or Section 8, subsection 5, of the National Labor Relations Act.

10. Denies specifically the allegations of paragraph 10 of the complaint.

11. Denies specifically the allegations of paragraph 11 of the complaint.

Board's Exhibit No. 2-H—(Continued.)

For a Second, Separate and Further Defense and Answer, Respondent Alleges:

The Industrial Accident Commission of the State of California, in decisions rendered shortly prior to the decision of the National Labor Relations Board ordering an election among certain news vendors selling the Los Angeles Times, and also subsequent to said decision of the Board, has ruled that news vendors selling the Los Angeles Times within the city limits of Los Angeles, California, were not employees of The Times-Mirror Company, but on the contrary were independent contractors. One of these decisions is entitled "Pendergast v. Times-Mirror Publishing Company et al." It was rendered August 9, 1940. A copy of said decision is attached hereto, marked "Exhibit A", and made a part hereof. The news vendor John C. Pendergast is one of the news vendors whose names appear on Times' Exhibit-6 (page 26) of documents introduced at the hearing in the Investigation and Certification Proceeding (Case No. XXI-R-1062).

Another such decision is entitled "Reich v. The Times-Mirror Company et al." It was rendered August 25, 1941. A copy of said decision is attached hereto, marked "Exhibit B", and made a part hereof. The news vendor Ike Reich is also one of the news vendors whose names appear on said Times' Exhibit 6 (page 20).

The activities of these news vendors, John C. Pendergast and Ike Reich, and their relations

Board's Exhibit No. 2-H—(Continued.)

with respondent are the same as the activities and relations with respondent of those news vendors selling the Los Angeles Times who testified at said Investigation and Certification Proceeding.

Another recent decision of the Industrial Accident Commission which is pertinent in establishing that the status of the news vendors who testified at said Investigation and Certification Proceeding is that of independent contractor and not that of employee, is entitled "Abe Goren v. Hearst Publications, Inc." It was rendered August 26, 1941. A copy of said decision is attached hereto, marked "Exhibit C", and made a part hereof.

For a Third, Separate and Further Defense and Answer, Respondent Alleges:

No one of the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is an employee of respondent.

For a Fourth, Separate and Further Defense and Answer, Respondent Alleges:

Each and all of the newsboys engaged in the street sale of Los Angeles Times is and are independent contractors.

For a Fifth, Separate and Further Defense and Answer, Respondent Alleges:

No question affecting commerce has arisen or can arise concerning the representation of the alleged employees (said newsboys selling the Los Angeles Times) of respondent.

Board's Exhibit No. 2-H—(Continued.)

For a Sixth, Separate and Further Defense and Answer, Respondent Alleges:

The National Labor Relations Board has no jurisdiction over respondent or the business conducted by it.

For a Seventh, Separate and Further Defense and Answer, Respondent Alleges:

The relations of respondent with the alleged employees (said newsboys selling the Los Angeles Times) are not subject to *the jurisdiction of said* Board.

For an Eighth, Separate and Further Defense and Answer, Respondent Alleges:

No claimed labor dispute between respondent and said alleged employees (said newsboys selling the Los Angeles Times) can affect commerce within the meaning of the National Labor Relations Act.

Wherefore, respondent prays that the complaint herein be dismissed.

THE TIMES-MIRROR COMPANY, A CORPORATION.
202 West First Street, Los Angeles, California.
COSGROVE & O'NEIL,
E. B. COSGROVE,
F. B. YOAKUM, JR.,
By /s/ F. B. YOAKUM, Jr.,
Attorneys for The Times-Mirror Company.

Board's Exhibit No. 2-H—(Continued.)

(Exhibit A)

Before the Industrial Accident Commission of the State of California

Claim No. L. A. 47967

Filed: August 9, 1940.

JOHN C. PENDERGAST,

Applicant,

vs.

TIMES-MIRROR PUBLISHING COMPANY, a corporation and PACIFIC EMPLOYERS INSURANCE COMPANY, a corporation,

Defendants.

DECISION AFTER REHEARING

Findings and Award issued on December 26, 1939 and a rehearing having been granted, and a further hearing having been had before Ralph E. Mustoe, Referee, and the matter having been submitted to the Commission for decision, and

The undersigned Commissioners having each read and considered the entire record, this Commission now makes its Decision After Rehearing as follows:

FINDINGS OF FACT

1. John C. Pendergast, while engaged as a newsvendor on November 2, 1939 at Los Angeles, California, sustained an injury.

2. At said time applicant was engaged in selling newspapers of defendant Times-Mirror Pub-

Board's Exhibit No. 2-H—(Continued.)

lishing Company, a corporation, whose insurance carrier was Pacific Employers Insurance Company, a corporation.

3. The evidence does not establish that said applicant was at said time an employee of defendant Times-Mirror Publishing Company, a corporation, or an employee at all, but that at said time said employee was an independent contractor and that the title to the newspapers sold by him actually passed from said defendant Times-Mirror Publishing Company, a corporation, to said applicant, within the meaning of Section 3352-c of the Labor Code.

AWARD

Now, Therefore, It Is Ordered that applicant take nothing by reason of his claim asserted in this proceeding and that the defendants be dismissed and discharged from liability herein.

Dated at San Francisco, California, Aug. 9, 1940.

INDUSTRIAL ACCIDENT
COMMISSION OF THE
STATE OF CALIFORNIA,
T. A. READDON,
LAFAYETTE J. MADDUX,
Commissioners.

(Seal of Industrial Accident Commission, State of California.)

Claim No. L. A. 47967
JHA:EG
Page 2

Board's Exhibit No. 2-H—(Continued.)

(Exhibit B)

Before the Industrial Accident Commission of the State of California

Claim No. L. A. 53-435

Filed August 25, 1941.

IKE REICH,

Applicant,

vs.

THE TIMES-MIRROR COMPANY, a corporation and PACIFIC EMPLOYERS INSURANCE COMPANY, a corporation,

Defendants.

FINDINGS AND AWARD

Theodore J. Levitan, attorney for applicant.

F. B. Yoakum, attorney for defendant employer.
F. B. McConnell, attorney for carrier.

An application for adjustment of claim for compensation having been filed herein, and all parties having appeared, and the matter having been regularly submitted for decision, W. Bond, Referee, makes his Findings and Award as follows:

FINDINGS OF FACT.

1. Ike Reich, applicant, occupation news vendor, sustained an injury on October 6, 1940, when

Board's Exhibit No. 2-H—(Continued.)

he was struck by an automobile at Los Angeles, California.

2. On said date defendant The Times-Mirror Company, a corporation, was insured under the compensation laws by Pacific Employers Insurance Company, a corporation.

3. The evidence does not establish that said applicant was on said date an employee of the defendant The Times-Mirror Company, a corporation, or an employee at all, but that on said date said employee was an independent contractor and that the title to the newspapers sold by him actually passed from said defendant The Times-Mirror Company, a corporation, to said applicant within the meaning of Section 352-c of the Labor Code.

AWARD

Now, Therefore, It Is Ordered that applicant take nothing by reason of the claim asserted and that said defendants be relieved from liability and discharged herefrom.

W. BOND,
Referee, Industrial Accident Commission.

Dated at Los Angeles, California, Aug. 25, 1941.

(Seal of Industrial Accident Commission, State of California.)

WB:EA
LA 53-435

Board's Exhibit No. 2-H—(Continued.)

(Exhibit C)

Before the Industrial Accident Commission of the State of California

Claim No. L. A. 53-671

Filed August 26, 1941.

ABE GOREN,

Applicant,

vs.

HEARST PUBLICATIONS, INC., a corporation, and PACIFIC EMPLOYERS INSURANCE COMPANY, a corporation,

Defendants.

FINDINGS AND AWARD

F. B. McConnell, attorney for Pacific Employers Ins. Co.

A. Lawrence Mitchell, attorney for employer.

An application for adjustment of claim for compensation having been filed herein, and all parties having appeared, and the matter having been regularly submitted for decision, W. Bond, Referee, makes his Findings and Award as follows:

FINDINGS OF FACT

Abe Goren, applicant, occupation news vendor, sustained an injury on February 28, 1941, when he was struck by an automobile at Los Angeles, California.

Board's Exhibit No. 2-H—(Continued.)

2. On said date defendant Hearst Publications, Inc., a corporation, was insured under the compensation laws by Pacific Employers Insurance Company, a corporation.

3. The evidence does not establish that said applicant was on said date an employee of the defendant Hearst Publications, Inc., a corporation, or an employee at all, but that on said date said employee was an independent contractor and that the title to the newspapers sold by him actually passed from said defendant Hearst Publications, Inc. a corporation, to said applicant within the meaning of Section 352-c of the Labor Code.

AWARD

Now, Therefore, It Is Ordered that applicant take nothing by reason of the claim asserted and that said defendants be relieved from liability and discharged herefrom.

W. BOND,
Referee, Industrial Accident Commission.

Dated at Los Angeles, California, Aug. 26, 1941.

WB:EA
L. A. 53-671

(Seal of Industrial Accident Commission, State of California.)

(Duly verified)

BOARD'S EXHIBIT No. 4

[Title of Board and Causes.]

Case No. XXI-C-1840

STIPULATION

1. The correct designation of the publisher of "Los Angeles Evening Herald & Express" is and has been since prior to January 1, 1931, "Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department)." Accordingly, in all formal papers of whatsoever nature filed or admitted in evidence in these proceedings and also in all such papers which may hereafter be made a part of the record of these proceedings, wherever necessary, the designation of said publisher shall be deemed corrected to read "Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department)."

2. There has been no material change in the conduct of the business of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), hereinafter called "Respondent" since the admission in evidence of "Board's Exhibits Nos. 2 and 2a" on June 11, 1940, in the consolidated hearing held in the cases entitled "Matter of Stockholders Publishing Company, Inc. et al., Cases R-1923 to R-1926, inclusive," involving the Respondent herein.

3. If all witnesses called by the Union, the Board or Respondent at the hearing at Los Angeles, California from June 10, 1940 to June 27, 1940, were called to testify in this proceeding at this time their

testimony would be substantially the same as the testimony given at said hearing of June 10th to June 27th, 1940; provided, however, that nothing herein contained shall be deemed to constitute an admission by Respondent that said testimony was sufficient, or would now be sufficient, to support a finding of fact or conclusion of law that the members of said Union, or any of them, were or are, in so far as their news vending activities are concerned, employees of Respondent, nor shall anything herein contained be deemed to constitute a waiver by Respondent (1) of the right to contend that the evidence taken at said hearing on June 10th to 27th, 1940, was insufficient to show that all or any of the members of Los Angeles Newsboys Industrial Union No. 75, C.I.O., or all or any of the persons within the unit held by the Board to be appropriate, were employees of Respondent; or (2) of the right to contend, on all or any of the grounds urged before, at, or after said previous hearing that the Board has no jurisdiction over Respondent.

4. On or about August 12, 1941, Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., hereinafter called the "Union", by letter, requested a meeting with Respondent for the purpose of bargaining collectively with it under the Certification abovementioned. Said communication was received by Respondent but no written reply was made to it. Accordingly, on August 28, 1941, a charge against Respondent was filed by the Union and these proceedings were thereby initiated. Thereafter Res-

pondent was notified of the filing of said charges and in reply thereto counsel for Respondent, by letter dated September 19, 1941, sent to the local offices of the Board, admitted that it had been and was continuing to refuse to bargain with the Union under said Certification for the reason that it adhered to its position taken in Cases Nos. R-1923 to R-1926, inclusive. Accordingly there has been no bargaining between Respondent and the Union under said Certification.

5. It is further stipulated and agreed that Respondent, by entering into this stipulation does not admit, consent or agree that the said members of said Union are, or any of them is, in so far as newsvending activities are concerned, employees or an employee of the Respondent, within the purview of the National Labor Relations Act or otherwise, and said Respondent does not hereby consent to or subject itself to the jurisdiction of the National Labor Relations Board, nor does it waive any of the grounds of objection heretofore asserted and maintained by it in Case No. XXI-R-928, also numbered R-1924, formerly pending before the National Labor Relations Board, and asserted and maintained by it in this case numbered XXI-C-1840 in its "Answer" and in its "Motion to Dismiss", both heretofore filed herein.

Dated at Los Angeles, California, this 12th day of November, 1941.

JAMES A. COBEY
Counsel for the Board

FLINT & MACKAY
By /s/ EDWARD L. COMPTON
Attorneys for Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department)
LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C.I.O.
By /s/ PAT COMORRE
Secy.

BOARD'S EXHIBIT No. 5

[Title of Board and Causes.]

Case No. XXI-C-1843

AGREED STATEMENT OF FACTS

For the purpose of this proceeding, and none other, it is hereby agreed that the facts hereinafter recited may be received in evidence in the above entitled proceeding as an Agreed Statement of Facts.

1. The Los Angeles Times is published by The Times-Mirror Company and has been published by said company since prior to January 1, 1939. Accordingly, in all documents filed, offered or received in evidence in this proceeding, and in all documents which may hereafter be made a part of the record of this proceeding, the designation of the publisher of the Los Angeles Times shall, when necessary, be deemed corrected to read "The Times-Mirror Company."

2. The business conducted by The Times-Mirror Company at the present time is substantially the same as that conducted by it in June, 1940, with respect to the matters appearing in the Agreed Statement of Facts admitted into evidence as "Board's Exhibit No. 14" on June 20, 1940, in the consolidated hearing held in the cases entitled "Matter of Stockholders Publishing Company, Inc., et al."—Cases XXI-R-927, XXI-R-928, XXI-R-1062 and XXI-R-1084—(sometimes designed Cases Nos. R-1923 to R-1926, inclusive).

3. The methods employed in street distribution and sale of the Los Angeles Times are substantially the same at present as they were at the time of the aforesaid hearing; this stipulation shall not be construed to be an admission by The Times-Mirror Company of the legal sufficiency of the evidence introduced at the aforesaid hearing to justify a finding or conclusion of law that the relationship of employer and employee then existed or now exists between The Times-Mirror Company and any news vendors then or now engaged in the sale of the Los Angeles Times.

4. On or about August 26, 1941, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., by registered letter requested a meeting with The Times-Mirror Company for the purpose of bargaining collectively with it. Subsequent to the receipt of said letter, and on September 3, 1941, the attorney for The Times-Mirror Company attended a meeting at the local offices of the Labor Board and orally advised Mr. William R. Walsh, Regional Di-

rector for the National Labor Relations Board, that The Times-Mirror Company would not presently bargain with the union, as requested, because by doing so it might preclude its right to challenge the jurisdiction of the Labor Board over The Times-Mirror Company with respect to its relations with news vendors selling the Los Angeles Times, or its right to have adjudicated by court decision its contention that none of the news vendors selling the Los Angeles Times were, at the time of the aforesaid hearing, or are now, employees of The Times-Mirror Company. At this meeting representatives of the union were present, and it was stipulated by all present that this statement of counsel for The Times-Mirror Company would be accepted as a reply to the union's letter of August 26, 1941. For these reasons there has been no collective bargaining between The Times-Mirror Company and said union.

The execution of this stipulation by counsel for The Times-Mirror Company shall in no manner constitute an admission by said company that National Labor Relations Board has jurisdiction over it in so far as this proceeding or said proceeding numbered XXI-R-1062 and/or R-1925 is concerned. Nor shall it be deemed as acquiescence in the correctness of the Board's rulings in respect to any phase of said proceeding XXI-R-1062 and or R-1925. It is specifically agreed by all parties that the "Motion to Dismiss" and "Answer of The Times-Mirror Company" on file herein, and all

other pleadings and documents heretofore filed by it in Case No. XXI-R-1062 and/or R-1925, are in no manner prejudiced or waived by the execution of this stipulation.

Dated at Los Angeles, California, this 12th day of November, 1941.

/s/ WM. R. WALSH
Regional Director Twenty-first Region National Labor Relations Board.

/s/ JAMES A. COBEY
Attorney National Labor Relations Board

LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.,

By /s/ PAT COMORRE
Secretary

COSGROVE & O'NEIL
T. B. COSGROVE,
F. B. YOAKUM, JR.,

By /s/ F. B. YOAKUM, JR.
Attorneys for The Times-Mirror Company

[Title of Board and Causes.]

Case No. XXI-C-1840[1]
Case No. XXI-C-1843

INTERMEDIATE REPORT

Statement of the Case

Upon charges duly filed[2] by Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaints, dated October 25, 1941, against the Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and The Times-Mirror Company, herein called the respondents, (sometimes called the Herald and the Times), alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaints accompanied by notice of hearing were duly served upon the respondents and the Union.

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[1]Cases Nos. XXI-C-1840 and XXI-C-1843 were consolidated by order of the National Labor Relations Board, dated October 23, 1941.

[2]Charges against Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) were filed on August 28, 1941, and against The Times-Mirror Company on September 3, 1941.

Concerning the unfair labor practices, the complaints alleged in substance: (1) that on or about August 12, 1941, and thereafter, the Herald and on or about September 3, 1941, and thereafter, the Times refused to bargain collectively with the Union as the exclusive representative of their employees within appropriate bargaining units, although the Union represented a majority of such employees and (2) that by such refusals the respondents interfered with, restrained and coerced their employees in the exercise of rights guaranteed in Section 7 of the Act.

On November 4 and November 7 respectively, the Times and the Herald filed their answers, admitting certain allegations of the complaints, but denying the commission of the alleged unfair labor practices and interposing certain affirmative defenses.

Pursuant to notice, a hearing was held in Los Angeles, California, on November 10 and 12, 1941, before the undersigned, the Trial Examiner, duly designated by the Chief Trial Examiner. The Board and the respondents were represented by counsel and the Union by its representative. All the parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

On November 4, 1941, the Times filed a written motion with the Regional Director, to dismiss the complaint on the grounds that the Board was without jurisdiction in the premises and that neither

the members of the Union nor other persons alleged in the complaint as comprising the unit appropriate for the purposes of collective bargaining were employees of the Times. A similar motion was filed by the Herald on November 7, 1941. The Regional Director did not rule upon these motions, which were renewed at the hearing. Both of these motions were denied by the undersigned.

At the conclusion of the hearing, counsel for the Board moved to amend the pleadings to conform to the proof, in respect to formal matters such as names, dates and minor inaccuracies. The motion was granted by the undersigned. At the conclusion of the hearing, the parties were afforded, but waived, the opportunity to argue orally before the undersigned. The parties were also given the opportunity to file briefs with the undersigned; however, no briefs were filed.

Upon stipulation entered into by the parties, subsequent to the closing of the hearing, the undersigned, on November 21, 1941, issued an order for corrections in the transcript of testimony in this proceeding, which is hereby made part of the record in the case. Upon the record thus made and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

Findings of Fact

I. The business of the respondents[3]

A. Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department)

Hearst Publications, Incorporated, is a California corporation with its principal office and place of business in San Francisco, California. It is engaged in the publication of various daily and Sunday newspapers, including the Los Angeles Evening Herald & Express.[4]

The Herald is an evening newspaper published daily, except Sunday, at its plant in Los Angeles, California,[5] and distributed throughout the State of

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[3]The facts related in this section are set forth in the "Decision and Direction of Election" issued by the Board on January 9, 1941, in cases R-1923 to 1926, inclusive, entitled "Matter of Stockholders Publishing Company et al" which was introduced in evidence (28 N.L.R.B. No. 151). During the instant hearing, it was stipulated by the respondents that there had been no material change in the conduct of their respective businesses since the consolidated hearing at Los Angeles, California, on June 10, 1940, before a Trial Examiner. (Cases XXI-R-927-928 and XXI-R-1062 and XXI-R-1084, sometimes designated Cases Nos. R-1923 to 1926, inclusive).

[4]In addition to the Herald, Hearst Publications, Incorporated, operates five other newspapers—(Los Angeles Examiner, San Francisco Examiner, San Francisco Call-Bulletin, Oakland Post-Examiner, and Seattle Post-Intelligencer).

[5]This plant is devoted exclusively to the publication and distribution of the Herald and is operated independently of other newspapers published by Hearst Publications, Incorporated.

California, principally in the metropolitan area of Los Angeles. Its average daily circulation exceeds 240,000 copies, of which approximately .37 of one per cent is sold and distributed outside the State of California.

The principal raw materials used in the printing of the Herald include mats and ink. During the year 1939, all the newsprint, consisting of about 18,915 tons, was obtained from the States of Washington and Oregon and the Dominion of Canada. During the same period, all the mats, numbering about 60,700, were obtained from the State of New York. The ink used, amounting to approximately 664,000 pounds, was manufactured in the State of California.

The Herald uses the wire reports of the International News Service, the Associated Press, the United Press, and the Dow-Jones Financial Service. The Herald supplies at least one wire service engaged in the interstate transmission of news with local news which the Herald has collected. During the year 1939, an average of 39 per cent of the space in the Herald was devoted to advertising, 16 per cent of which originated outside of California.

B. The Times-Mirror Company

The Times-Mirror Company is a California corporation, having its principal office and place of business in Los Angeles, California. It is engaged in the publication, distribution, and sale of "The Los Angeles Times," a morning newspaper, published

daily including Sunday, at its plant in Los Angeles. During the year 1939, the Times had an average daily circulation of approximately 220,000 copies and a Sunday circulation of approximately 367,800 copies. The Times is distributed throughout California, principally in the metropolitan area of Los Angeles. Approximately 1.7 per cent or about 3900 copies of the average daily editions in 1939 were sold outside the State of California. During the same period approximately 2.5 per cent or about 9000 copies of the Sunday edition were sold outside the State of California.

The principal raw materials used in printing the Times include news print, mats, and ink. During the year 1939, all the newsprint having a value of approximately $2,086,000 was purchased outside the State of California. The ink used, having a value of approximately $99,475, was purchased in California.

The Times uses the wire reports of the Associated Press, the United Press, and Dow-Jones Financial News Service. In addition it receives wire service from the Chicago Tribune and the New York News, and obtains photographs from Wide World Photos and the Associated Press. The Times supplies news gathered and assembled by it to the Associated Press. During 1939 the Times received from national syndicates and published at least 10 feature services, among the more prominent being those of Walter Lippman, Westbrook Pegler and American Institute of Public Opinion (Gallup Poll). During 1939, an average of 39.9 per cent of the space in the

Times was devoted to advertising, 14.1 per cent of which contained national advertising.

II. The organization involved

Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. is a labor organization chartered by the Congress of Industrial Organizations admitting to membership employees of the respondents.

III. The unfair labor practices

A. The refusal to bargain collectively

1. The appropriate unit

The complaints alleged, the Board found in its Decision and Direction of Elections dated January 9, 1941,[6] and the undersigned finds that (a) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys and (b) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, constitute units appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, and the undersigned further finds that the aforesaid employees, at all times material herein constituted and now constitute units appropriate for the purposes of collective bargain-

[6] 28 N.L.R.B., No. 151.

ing and that such units will insure to employees of the respondents the full benefit of their right to self-organization, and to collective bargaining and otherwise effectuate the policies of the Act.

2. Representation by the Union of a majority in the appropriate units

Pursuant to the Board's Decision and Direction of Elections, dated January 9, 1941,[7] separate elections by secret ballot were conducted under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California) on May 14, 1941, among the employees of the Herald and on May 15, 1941, among the employees of the Times. As a result of these elections, the Board issued its Supplemental Decision and Certification of Representatives dated July 30, 1941,[8] in which it certified that the Union had been designated and selected by a majority of all employees within the aforesaid appropriate units, and pursuant to the provisions of Section 9 (a) of the Act, the Union was the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

The undersigned finds that on and at all times after July 30, 1941, in respect to both the Herald and the Times, the Union was the duly designated bargaining representative of a majority of the em-

[7] 28 N.L.R.B., No. 151.

[8] 33 N.L.R.B., No. 168.

ployees in the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times and is now the exclusive representative of all the employees in the aforesaid units for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

3. The refusal to bargain

The complaints alleged and the respondents admitted in their respective answers, that on or about August 12, 1941, and thereafter, in respect to the Herald and on or about September 3, 1941, and thereafter in respect to the Times, the respondents refused to bargain collectively with the Union within the meaning of Section 8 (5) of the Act. The aforesaid answers alleged that such refusals to bargain were based upon advice of competent counsel and in the bona fide belief that the Board had no jurisdiction over the respondents, in respect to their relationship with their news vendors, as they were independent contractors and not employees. The respondents denied in their answers that they were engaged in interstate commerce within the meaning of the Act. The undersigned finds that these contentions of the respondents are without merit.

In its Decision and Direction of Elections, dated January 9, 1941, cases Nos. R-1923 to 1926, inclusive,[2] based upon the record of the hearing held at Los Angeles, California, from June 10 to 27, 1940,

[2] 28 N.L.R.B., No. 151.

by a Trial Examiner duly designated by the Board,[10] the Board held that the respondents were engaged in interstate commerce within the meaning of Section 2 (6) of the Act, and that the employees of the respondents within the aforesaid appropriate units were employees within the meaning of Section 2 (3) of the Act.[11]

The respondents did not call any witnesses or introduce any relevant documentary evidence at the instant hearing.[12]

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[10]Matter of Stockholders Publishing Company et al, cases XXI-R-927, XXI-R-928, XXI-R-1026 and XXI-R-1084 (sometimes designated cases Nos. R-1923 to R-1926, inclusive).

[11]During the instant hearing, counsel for the Herald stipulated that "if all witnesses called by the Union, the Board or the respondent at the hearing at Los Angeles, California, from June 10, 1940, to June 27, 1940, were called to testify in this proceeding at this time their testimony would be substantially the same as the testimony given at said hearing of June 10th to June 27th, 1940; . . ."

Counsel for the Times stipulated that "the methods employed in street distribution and sale of the Los Angeles Times are substantially the same at present as they were at the time of the aforesaid hearing . . . " (June 10 to 27, 1940)

[12]During the course of the instant hearing, counsel for the Times offered in evidence transcripts of the proceedings in the Matter of Pendergast v. The Times-Mirror Company et al before the Industrial Accident Commission of California, dated December 5, 1939, and February 21, 1940, respectively, together with the findings of the Commission, dated August 9, 1941. Also similar transcripts in re Ike Reich v. The Times-Mirror Company et al, dated

The undersigned finds that the respondents on August 12, 1941, in respect to the Herald and on September 3, 1941, in respect to the Times, and at all times thereafter, have refused to bargain collectively with the Union as the exclusive representative of their employees in appropriate units and have thereby interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the respondents, set forth in Section III above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

March 27, 1941, and May 14, 1941, respectively, together with the findings of the Commission, dated August 25, 1941. Also the findings of the Commission in re Abe Goren v. Hearst Publications, Inc. Company, dated August 26, 1941. These documents were rejected by the undersigned. They were marked "Rejected Documents" and placed with the other records in the case.

The findings of the Commission dated August 9, 1941, in the Peindergast case were brought to the attention of the Board in a supplemental brief filed with the Board by counsel for the Times prior to the issuance of the Board's Decision and Direction of Elections, dated January 9, 1941, (28 N.L.R.B., No. 151).

V. The remedy.

Since it has been found that the respondents have engaged in unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action, designed to effectuate the policies of the Act.

It has been found that the respondents have refused to bargain collectively with the Union as its representative of a majority of the employees in appropriate units. It will therefore be recommended that the respondents bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law

1. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. The following employees of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and The Times-Mirror Company, both of Los Angeles, California, at all times material herein, constituted and now constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: (a) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-

time newsboys and (b) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys.

3. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., has been at all times material herein the exclusive representative of all employees in the aforesaid units, (a) and (b), for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as exclusive representative of all their employees in the aforesaid appropriate units, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

6. The aforesaid ufair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in

the case, the undersigned recommends that the respondents, Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and The Times-Mirror Company, and their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive bargaining representative of their employees who are (a) full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys and (b) newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys;

(b) Engaging in any like or related acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75,

C.I.O., as the exclusive representative of their employees who are (a) full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys and (b) newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, in respect to rates of pay, wages, hours of employment and other conditions of employment;

(b) Post notices immediately in conspicuous places in their plants and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondents will not engage in the conduct from which it is recommended that they cease and desist in paragraphs 1 (a) and (b) of these recommendations and (2) that the respondents will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Twenty-first Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondents have taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report the respondents notify said Regional Director in writing that they will comply

with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended—any party may within thirty (30) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within twenty (20) days after the date of the order transferring the case to the Board.

/s/ W. P. WEBB,
Trial Examiner.

Dated: December 4, 1941.

[Title of Board and Causes.]

Case No. C-2024

(XXI-C-1843)

EXCEPTIONS OF THE TIMES-MIRROR COMPANY TO THE INTERMEDIATE REPORT AND OTHER PARTS OF THE RECORD AND PROCEEDING.

Comes now the Times-Mirror Company, respondent herein, and files this, its Exceptions to the Intermediate Report of the Trial Examiner, Honorable W. P. Webb, and to other parts of the record and proceeding (including rulings on motions and objections) and to findings, conclusions of law and rulings as hereinafter specified in Case No. R-1925 (XXI-R-1062).

The Intermediate Report is dated December 4, 1941, and this case was transferred to and continued before the Board pursuant to order of the Board dated December 6, 1941.

These Exceptions are filed pursuant to Article II, Section 33, of National Labor Relations Board Rules and Regulations—Series 2, as amended.

Exceptions to Intermediate Report:

1. To "Finding II", appearing on page 4 of the Intermediate Report, reading as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. is a labor organization chartered by the Congress of Industrial Organ-

izations admitting to membership employees of the respondents."*

2. To that portion of "Finding III(A)(1)", appearing on page 4 of the Intermediate Report, reading as follows:

> "* * * the undersigned finds that * * * (b) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, constitute units appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, and the undersigned further finds that the aforesaid employees, at all times material herein constituted and now constitute units appropriate for the purposes of collective bargaining and that such units will insure to employees of the respondents the full benefit of their right to self-organization, and to collective bargaining and otherwise effectuate the policies of the Act."
>
> (p. 4, lines 41-54)

3. To that portion of "Finding III(A)(2)", ap-

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* The excerpts from the Intermediate Report and also from the various rulings of the Board in the certification case, No. R-1925 (XXI-R-1062), in many instances contain plural nouns and verbs, occasioned by the consolidations ordered by the Board; the Board will understand that we here take exception to the portions indicated only so far as they refer to the respondent The Times-Mirror Company.

pearing on page 5 of the Intermediate Report, reading as follows:

"The undersigned finds that on and at all times after July 30, 1941, in respect to * * * the Times, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times and is now the exclusive representative of all the employees in the aforesaid units for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment."

(p. 5, lines 18-25)

4. To that portion of "Finding III(A)(3)" of the Trial Examiner, appearing on pages 5 and 6 of the Intermediate Report, reading as follows:

"The undersigned finds that these contentions of the respondents are without merit."*

(p. 5, lines 39-40)

"The undersigned finds that the respondents * * * on September 3, 1941, in respect to the Times, and at all times thereafter, have refused to bargain collectively with the Union as the exclusive representative of their employees in appropriate units and have thereby interfered with, restrained and coerced their employees in

*The contentions were that the newsboys were not employees and that the acts of the respondent with reference to the newsboys had no effect on commerce.

the exercise of the rights guaranteed in Section 7 of the Act."

(p. 6, lines 7-13)

5. To "Finding IV", appearing on page 6 of the Intermediate Report, reading as follows:

"The activities of the respondents, set forth in Section III above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(p. 6, lines 18-23)

6. To "Finding V", appearing on page 7 of the Intermediate Report, reading as follows:

"Since it has been found that the respondents have engaged in unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

"It has been found that the respondents have refused to bargain collectively with the Union as the representative of a majority of the employees in appropriate units. It will therefore be recommended that the respondents bargain collectively with the Union."

7. To that portion of the "Conclusions of Law", appearing on page 7 of the Intermediate Report, reading as follows:

"1. Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act.

"2. The following employees of * * * The Times-Mirror Company, both of Los Angeles, California, at all times material herein, constituted and now constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: * * * (b) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys.

"3. Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been at all times material herein the exclusive representative of all employees in the aforesaid units, * * * (b), for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

"4. By refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as exclusive representative of all their employees in the aforesaid appropriate units, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

"5. By interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging

in unfair labor practices within the meaning of Section 8 (1) of the Act.

"6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act."

8. To that portion of "Recommendations", appearing on page 8 of the Intermediate Report, reading as follows:

"1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of their employees who are * * * (b) newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys;

"(b) Engaging in any like or related acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

"2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

"(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of their employees who are * * * (b) newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, in respect to rates of pay, wages, hours of employment and other conditions of employment;

"(b) Post notices immediately in conspicuous places in their plants and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) days consecutive days from the date of posting, stating (1) that the respondents will not engage in the conduct from which it is recommended that they cease and desist in paragraphs 1 (a) and (b) of these recommendations and (2) that the respondents will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

"(c) Notify the Regional Director for the Twenty-first Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondents have taken to comply herewith.

"It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report the respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the

National Labor Relations Board issue an order requiring the respondents to take the action aforesaid."

(p. 8, lines 1-51)

Exceptions to Rulings of the Trial Examiner During the Course of the Hearing in This Case upon the Complaint and Answer:

1. To the ruling refusing to admit in evidence respondent's Exhibits 1, 2-A, 2-B, 3, 4-A and 4-B for identification [R. 41-46, 58].

2. To the denial of respondent's Motion to Dismiss Complaint (Board's Exhibit 2-G); the ruling appears in the Official Report of Proceedings (p. 73, lines 17-23).

Exceptions to Rulings in the Certification Case, Being Case No. R-1925 (XXI-R-1062):

1. To the denial by the Board of respondent's Motion to Dismiss Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act (Board's Exhibit 1-R in XXI-R-1062); the Board's ruling appears in its Decision and Direction of Elections, decided January 9, 1941 (28 NLRB No. 151).

2. To "Finding II" of the Board, appearing on page 6 of the Decision and Direction of Elections, reading as follows:

"Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership all persons in

the metropolitan area of Los Angeles employed in the general distribution and sale of newspapers, magazines, and periodicals, except those who have the power to hire and discharge."

3. To that portion of "Finding III" of the Board, appearing on page 16 of said Decision, reading as follows:

"Accordingly, we find that the newsboys involved in this proceeding are employees within the meaning of Section 2 (3) of the Act."

4. To that portion of "Finding IV" of the Board, appearing on page 16 of said Decision, reading as follows:

"We find that questions have arisen concerning the representation of employees of the Companies."

5. To "Finding V" of the Board, appearing on page 16 of said Decision, reading as follows:

"We find that the questions concerning representation which have arisen, occurring in connection with the operations of the Companies described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

6. To that portion of "Finding VI" of the Board, appearing on pages 17 and 18 of said Decision, reading as follows:

"* * * we find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining: * * * (c) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys * * *. We further find that said units will insure to employees of the Companies the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act."

7. To that portion of "Finding VII" of the Board, appearing on page 18 of said Decision, reading as follows:

"At the hearing lists prepared by * * * the Times were introduced in evidence purporting to show the following approximate current number of newsboys employed * * * :

* * * * * * *

"Times . . . . . 627"

8. To the "Conclusions of Law", appearing on page 19 of said Decision, reading as follows:

"1. Questions affecting commerce have arisen concerning the representation of employees of the Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

"2. The following employees of * * * The Times-Mirror Company, * * * all of Los Angeles, California, constitute units appropriate for

the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: * * * (c) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys * * * ."

9. To that portion of the "Direction of Elections", appearing on pages 19 and 20 of said Decision, reading as follows:

"Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining, elections by secret ballot shall be conducted as early as possible * * * among the employees of the Companies within the groups described below who were employed by any of the Companies on the date of this Direction of Elections, including employees who did not work on said date because they were ill or on vacation, and employees who were then or shall have since been temporarily laid off, and excluding employees who shall have since quit or been discharged for cause:

* * * * *

"(c) All newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys * * * ."

10. To that portion of the Board's Order dated May 21, 1941, reading as follows:

> "It Is Hereby Ordered that the said 'Objections to Validity of Direction of Elections and Exceptions to the Same; Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Times Unit)' be, and they hereby are, overruled."

11. To the "Report on Objections" of Regional Director William R. Walsh, dated June 12, 1941, and to each and all of the rulings of the Regional Director wherein he overruled the objections set forth in the "Objections to the Conduct of the Ballot and to the Election Report" filed by respondent with the Regional Director on June 6, 1941.

12. To those portions of the "Supplemental Decision and Certification of Representatives" rendered by the Board on July 30, 1941 (33 NLRB No. 168), reading as follows:

> "We hereby overrule in their entirety the Times' Objections to the Conduct of the Ballot and to the Election Report."
>
> (p. 5)
>
> * * * * *
>
> "It Is Hereby Certified that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been designated and selected by a majority of all employees of The Times-Mirror Company, Los Angeles, California, who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5

or more days a week, within Los Angeles and Glendale, California, excluding temporary newsboys, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment."

(p. 6)

Dated at Los Angeles, California, this 31st day of December, 1941.

THE TIMES-MIRROR COMPANY,

By Its Attorneys:

COSGROVE & O'NEIL,

T. B. COSGROVE,

F. B. YOAKUM, JR.,

By /s/ T. B. COSGROVE.

[Title of Board and Causes.]

Case No. C-2023

(XXI-C-1840)

EXCEPTIONS OF HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD AND EXPRESS DEPARTMENT) TO THE INTERMEDIATE REPORT AND OTHER PARTS OF THE RECORD AND PROCEEDING.

Comes now Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department), respondent herein, and files this, its Exceptions to the Intermediate Report of the Trial Examiner, Honorable W. P. Webb, and to other parts of the record and proceedings (including rulings on motions and objections) and to findings, conclusions of law and rulings as hereinafter specified in Case No. R-1924, also numbered XXI-R-928.

Said Intermediate Report is dated December 4, 1941, and the above entitled and numbered case was transferred to and continued before the Board pursuant to order of the Board dated December 6, 1941.

These Exceptions are filed pursuant to Article II, Section 33, of National Labor Relations Board Rules and Regulations, Series 2, as amended.

Exceptions to Intermediate Report dated December 4, 1941:

(1) To "Finding II. The organization involved", appearing on page 4 of the Intermediate Report, reading as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. is a labor organization chartered by the Congress of Industrial Organizations admitting to membership employees of the respondents."
>
> (p. 4, lines 30-33)

(2) To that portion of Finding contained in Section 1, entitled "The appropriate unit", of subparagraph A of paragraph III, appearing on page 4 of said Intermediate Report, reading as follows:

> "* * * the undersigned finds that (a) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys * * * constitute units appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, and the undersigned further finds that the aforesaid employees, at all times material herein constituted and now constitute units appropriate for the purposes of collective bargaining and that such units will insure to employees of the respondents the full benefit of their right to self-organization,

and to collective bargaining and otherwise effectuate the policies of the Act."

(p. 4, lines 41 to 55)

(3) To that portion of Finding contained in Section 2, entitled "Representation by the Union of a majority in the appropriate units", of subparagraph A of paragraph III, appearing on page 5 of said Intermediate Report, reading as follows:

"* * * The undersigned finds that on and at all times after July 30, 1941, in respect to * * * the Herald * * * the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times and is now the exclusive representative of all the employees in the aforesaid units for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment."

(p. 5, lines 18 to 25)

(4) To those portions of Finding contained in Section 3, entitled "The refusal to bargain", of subparagraph A of paragraph III, appearing on pages 5 and 6 of said Intermediate Report, reading as follows:

"* * * The undersigned finds that these contentions of the respondents are without merit."

(p. 5, lines 39 and 40)

"* * * The respondents did not * * * intro-

duce any relevant documentary evidence at the instant hearing * * * The undersigned finds that the respondents on August 12, 1941, in respect to the Herald * * * and at all times thereafter, have refused to bargain collectively with the Union as the exclusive representative of their employees in appropriate units and have thereby interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act."

(p. 6, lines 3 to 13)

(5) To Finding IV, entitled "The effect of the unfair labor practices upon commerce", appearing on page 6 of said Intermediate Report, reading as follows:

"The activities of the respondents, set forth in Section KKK above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(p. 6, lines 18 to 23)

(6) To Finding V, entitled "The remedy", appearing on page 7 of the Intermediate Report, and reading as follows:

"Since it has been found that the respondents have engaged in unfair labor practices, it will be recommended that they cease and desist

therefrom, and take certain affirmative action, designed to effectuate the policies of the Act.

"It has been found that the respondents have refused to bargain collectively with the Union as the representative of a majority of the employees in appropriate units. It will therefore be recommended that the respondents bargain collectively with the Union."

(p. 7, lines 3 to 11)

(7) To that portion of the "Conclusions of Law" appearing on page 7 of said Intermediate Report, reading as follows:

"* * * The following employees of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) * * * of Los Angeles, California, at all times material herein, constituted and now constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: (a) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys * * * "

3. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., has been at all times material herein the exclusive representative of all employees in the aforesaid units, (a) and (b), for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing to bargain collectively with

Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as exclusive representative of all their employees in the aforesaid appropriate units, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act."

(p. 7, lines 21 to 51)

(8) To those portions of "Recommendations" appearing on page 8 of said Intermediate Report, reading as follows:

"1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive bargaining representative of their employees who are (a) full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys * * * .

(b) Engaging in any like or related acts or conduct interfering with, restraining or co-

ercing its employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive representative of their employees who are (a) full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys * * * in respect to rates of pay, wages, hours of employment and other conditions of employment;

(b) Post notices immediately in conspicuous places in their plants and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondents will not engage in the conduct from which it is recommended that they cease and desist in paragraphs 1 (a) and (b) of these recommendations and (2) that the respondents will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Twenty-first Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondents have taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report the respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents to take the action aforesaid."

(p. 8, lines 1 to 51)

Exceptions to Rulings of the Trial Examiner During Course of the Hearing in This Case upon the Complaint, the Respondent's Motion to Dismiss and the Answer:

(1) To the ruling refusing to admit in evidence Exhibits 1, 2-A, 2-B, 3, 4-A and 4-B for identification (Official Report of Proceedings, p. 63, line 17 to page 65, line 20).

(2) To the denial of respondent's Motion to Dismiss Complaint (Board's Exhibit 1-G); the ruling appears in the Official Report of Proceedings (p. 73, lines 17 to 21).

Exceptions to Rulings in the Case Instituted for Investigation and Certification of Representatives Pursuant to Section 9 (c) of the National Labor Relations Act, Being Case No. R-1924, also numbered XXI-R-928.

(1) To the denial by the Board of respondent's "Motion to Dismiss Amended Petition for Investigation and Certification of Representatives Pursuant to Section 9 (c) of the National Labor Relations Act" (Board's Exhibit 1-CC) in Case No. R-1924, also numbered XXI-R-928; the Board's ruling appears in its Decision and Direction of Elections, decided January 9, 1941 (28 NLRB No. 151).

2. To Finding II, entitled "The organization involved" of the Board, appearing on page 6 of the said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership all persons in the metropolitan area of Los Angeles employed in the general distribution and sale of newspapers, magazines, and periodicals, except those who have the power to hire and discharge."

(3) To that portion of Finding III, entitled "Status of the newsboys involved in this proceeding", appearing on page 16 of said Decision, reading as follows:

> "Accordingly, we find that the newsboys involved in this proceedings are employees within the meaning of Section 2 (3) of the Act."

(4) To that portion of Finding IV, entitled "The question concerning representation", appear-

ing on page 16 of said Decision, reading as follows:

> "We find that questions have arisen concerning the representation of employees of the Companies."

(5) To Finding V, entitled "The effect of the questions concerning representation upon commerce", appearing on page 16 of said Decision, reading as follows:

> "We find that the questions concerning representation which have arisen, occurring in connection with the operations of the Companies described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(6) To that portion of Finding VI, entitled "The appropriate units", appearing on pages 17 and 18 of said Decision and Direction of Elections, reading as follows:

> "* * * we find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining: * * * (b) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys; * * * We further find that said units will insure to employees of the Companies the full benefit of their right to self-organization and to collec-

tive bargaining and otherwise effectuate the policies of the Act."

(7) To that portion of Finding VII, entitled "The determination of representatives", of the Board, appearing on page 18 of said Decision, reading as follows:

"At the hearing lists prepared by the Herald * * * were introduced in evidence purporting to show the following approximate current number of newsboys employed by each of these Companies:

Herald ---------- 219 * * * "

(8) To the "Conclusions of Law", appearing on page 19 of said Decision and Direction of Elections, reading as follows:

"1. Questions affecting commerce have arisen concerning the representation of employees of the Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The following employees * * * Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), * * * of Los Angeles, California, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: * * * (b) all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys; * * * "

(9) To that portion of the "Decision and Direction of Elections", appearing on pages 19 and 20 of said Decision, reading as follows:

"* * * Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining, elections by secret ballot shall be conducted as early as possible but not later than thirty (30) days from the date of this Direction of Elections, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the employees of the Companies within the groups described below who were employed by any of the Companies on the date of this Direction of Elections, including employees who did not work on said date because they were ill or on vacation, and employees who were then or shall have since been temporarily laid off, and excluding employees who shall have since quit or been discharged for cause:

* * * * * * *

(b) All full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;"

(10) To that portion of the "Report on Objections", dated May 26, 1941, reading as follows:

> "The undersigned has considered the same (Objections to the Conduct of the Ballot and to the Election Report) and finds that the said objections raised no material issue with respect to the conduct of the ballot, but that the Objections concern matters which were of record before the Board, which the Board duly considered in issuing its Direction of Election."

(11) To that portion of "Supplemental Decision and Certification of Representatives", dated July 30, 1941, appearing on page 3 thereof, reading as follows:

> "On May 23, 1941, the Herald filed Objections to the Conduct of the Ballot and to the Election Report. On May 26, 1941, the Regional Director, acting pursuant to Article III, Section 9, of said Rules and Regulations, issued his Report on Objections. The Board has considered the Objections and the Regional Director's Report on Objections, and finds that the Objections raise no substantial or material issue with respect to the conduct of the election. The Objections are hereby overruled."

(12) To that portion of that certain "Supplemental Decision and Certification of Representatives", dated July 30, 1941, appearing on page 5 thereof, reading as follows:

> "It is hereby certified that Los Angeles Newsboys Local Industrial Union No. 75,

C.I.O., has been designated and selected by a majority of all employees of Hearst Publications, Incorporated, (Los Angeles Evening Herald & Express Department) Los Angeles, California, who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9(a) of the Act, Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment; * * *"

Dated at Los Angeles, California, this 2nd day of January, 1942.

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD AND EXPRESS DEPARTMENT)

By Its Attorneys:
FLINT & MacKAY,
H. S. MacKAY, JR.,
EDWARD L. COMPTON,
D. W. HAMBLIN,

By EDWARD L. COMPTON

[Title of Board and Cause.]

Case No. C-2023
Case No. C-2024

Room 442
Shoreham Building
Washington, D. C.

A hearing was held in the above matter for the purpose of Oral Argument at the above place January 22, 1942, at 10:30 a. m.

Before:

Harry A. Millis, Chairman.
William M. Leiserson, Member.

Appearances:

Eugene Thorrens, of Counsel to the Board.

For the Company:

T. B. Cosgrove (Times Mirror)
Rowan Building
Los Angeles, California

Harvey J. Kelly (Los Angeles Herald & Express Dept.)
H. Bar H. Ranch
Harrison, Idaho

[Title of Board and Cause.]

Case No. C-2023
Case No. C-2024

Mr. James A. Cobey, for the Board.

Flint & MacKay, by Mr. H. S. MacKay, Jr., Mr. Edward L. Compton, and Mr. D. H. Hamblin, of Los Angeles, Calif., and Mr. Harvey J. Kelly, of Harrison, Idaho, for the Herald.

Cosgrove & O'Neil, by Mr. T. B. Cosgrove and Mr. F. B. Yoakum, Jr., of Los Angeles, Calif., for the Times.

Mr. Patrick Comorre, of Los Angeles, Calif., for the Union.

Mr. Eugene R. Thorrens, of counsel to the Board.

DECISION AND ORDER

STATEMENT OF THE CASE

Upon charges duly filed[1] by Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaints, dated October 25, 1941, against Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and the Times-Mirror Company, herein called the respondents, (sometimes called the Her-

[1] Charges against Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) were filed on August 28, 1941, and against the Times-Mirror Company on September 3, 1941.

ald and the Times, respectively), alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.[2] Copies of the complaints accompanied by notice of hearing were duly served upon the respondents and the Union.

Concerning the unfair labor practices, the complaints alleged in substance: (1) that on or about August 12, 1941, and thereafter, the Herald and, on or about September 3, 1941, and thereafter, the Times refused to bargain collectively with the Union as the exclusive representative of their employees within appropriate bargaining units, although the Union represented a majority of such employees and (2) that by such refusals the respondents interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

On November 4 and November 7, 1941, respectively, the Times and the Herald filed answers, admitting certain allegations of the complaints, but denying the commission of the alleged unfair labor

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[2]By order entered on October 23, 1941, the Board, pursuant to Article II, Section 36 (b) of its Rules and Regulations—Series 2, as amended, had consolidated the cases for the purposes of the proceeding. In our present decision, as well as in the Board's decision in the representation proceedings hereinafter referred to, we have not considered evidence with respect to one publisher as applicable to any other publisher.

practices and interposing certain defenses hereinafter set forth.

Pursuant to notice, a hearing was held in Los Angeles, California, on November 10 and 12, 1941, before W. P. Webb, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and the respondents were represented by counsel and the Union by its representative. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

On November 4, 1941, the Times had filed a written motion with the Regional Director, to dismiss the complaint on the ground that the Board was without jurisdiction since its operations did not affect interstate commerce and neither the members of the Union nor other persons alleged in the complaint as comprising the unit appropriate for the purposes of collective bargaining were employees of the Times. A similar motion had been filed with the Regional Director by the Herald on November 7, 1941. The Regional Director did not rule upon the motions, and the respondents renewed them at the hearing. The Trial Examiner denied the motions. At the conclusion of the hearing, counsel for the Board moved to amend the pleadings to conform to the proof with respect to formal matters such as names, dates, and minor inaccuracies, and the Trial Examiner granted the motion. During the course of the hearing the Trial Examiner made several rulings on other motions and on

objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. After the close of the hearing, the Trial Examiner entered an order, dated November 21, 1941, correcting errors in the transcript of the testimony and making the corrections a part of the record in accordance with a written stipulation entered into between all parties, dated November 21, 1941.

Thereafter the Trial Examiner issued and duly served upon the parties his Intermediate Report, dated December 4, 1941, finding that the respondents had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act, and recommending that the respondents cease and desist from their unfair labor practices and, upon request, bargain collectively with the Union. On January 5, 1942, the respondents filed exceptions to the Intermediate Report and briefs in support of the exceptions. Pursuant to notice duly served on all parties, a hearing for the purpose of oral argument was held before the Board in Washington, D. C., on January 22, 1942. The respondents were represented by counsel and participated in the argument. The Union did not appear.

The Board has considered the exceptions to the Intermediate Report and the briefs submitted by the parties and, insofar as they are inconsistent with the findings of fact, conclusions of law, and

order set forth below, finds the exceptions to be without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The business of the respondents[3]

A. Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department)

Hearst Publications, Incorporated, is a California corporation with its principal office and place of business in San Francisco, California. It is engaged in the publication of various daily and Sunday newspapers, including the Los Angeles Evening Herald & Express.[4]

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[3]The facts related in this action are taken from the Board's Decision and Direction of Elections, dated January 9, 1941, in Matter of Stockholders Publishing Company and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., et al., 28 N.L.R.B., No. 151, a representation proceeding, which, as hereinafter set forth, involved the respondents herein. In the present proceeding it was stipulated by all parties that the business of the respective respondents has continued without substantial change from that conducted by them at the time of the hearing in the aforementioned representation proceeding.

[4]In addition to the Herald, Hearst Publications, Incorporated, operates five other newspapers (Los Angeles Examiner, San Francisco Examiner, San Francisco Call-Bulletin, Oakland Post-Enquirer, and Seattle Post-Intelligencer) and owns stock in the following subsidiaries: (1) American Weekly, Inc., a New York Corporation which publishes

The Herald is an evening paper published daily except Sunday at its plant in Los Angeles[5] and dis-

"The American Weekly," a Sunday magazine and comic section which is a supplement and part of various Sunday newspapers published in cities throughout the United States; (2) Illinois Publishing and Printing Company, an Illinois corporation, which publishes the "Chicago Herald-American"; (3) Pitt Publishing Company, a Pennsylvania corporation, which publishes the "Pittsburgh Sun-Telegram" and operates through its subsidiary WCAE, Incorporated, radio station WCAE; and (4) The Times Publishing Company, a Michigan corporation, which publishes "Detroit Times." Hearst Publications, Incorporated, is a wholly owned subsidiary of Hearst Consolidated Publications, Inc., a Delaware corporation, all of the common stock of which is owned by The Hearst Corporation, a Delaware corporation, a wholly owned subsidiary of American Newspapers, Inc., a Delaware corporation. Clarence J. Shearn, as voting trustee, holds the legal title to all the common stock of American Newspapers, Inc., for the benefit of William Randolph Hearst. Hearst Consolidated Publications, Inc., The Hearst Corporation, and American Newspapers, Inc., have various subsidiaries engaged in the publishing and other businesses in various parts of the United States. Cf. Matter of William Randolph Hearst, Hearst Publications, Inc., Hearst Consolidated Publications, Inc., Hearst Corporation, American Newspapers, Inc., and King Features Syndicate, Inc., and American Newspaper Guild, Seattle Chapter, 2 N.L.R.B. 530, enf'd as mod., National Labor Relations Board v. Hearst, 102 F. (2d) 658 (C.C.A. 9).

[5]This plant is exclusively devoted to the publication and distribution of the Herald and is operated independently of other papers published by Hearst Publications, Incorporated.

tributed throughout the State of California, principally in the metropolitan area of Los Angeles. Its daily circulation averages 243,022 copies, of which approximately 37 hundredths of 1 percent or 903 copies are sold and distributed outside the State of California.

The principal raw materials used in the printing of the Herald include newsprint, mats, and ink. During the year 1939, all the newsprint, consisting of 18,915 tons, was obtained from the States of Washington and Oregon and the Dominion of Canada. During the same period, all the mats, numbering 60,700, were obtained from the State of New York. The ink used, amounting to 664,408 pounds, was manufactured in the State of California.

The Herald uses the wire reports of the International News Service,[6] the Associated Press,[7] the United Press,[8] and the Dow-Jones Financial Serv-

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[6]For a description of the business of International News Service, see Matter of William Randolph Hearst, et al. and American Newspaper Guild, Seattle Chapter, 2 N.L.R.B. 530 enf'd as mod., National Labor Relations Board v. Hearst, 102 F. (2d) 658 (C.C.A. 9).

[7]For a description of the Nation-wide business of the Associated Press, see Matter of The Associated Press and American Newspaper Guild, 1 N. L. R. B. 788, enf'd, National Labor Relations Board v. Associated Press, 85 F. (2d) 56 (C.C.A. 2), 301 U. S. 103.

[8]For a description of the business of the United Press, see Matter of United Press Association and American Newspaper Guild, 3 N.L.R.B. 344.

ice. It uses daily approximately 332,000 words received from these services. The Herald supplies local news to at least one wire service engaged in the interstate transmission of news. In 1939 the Herald received and published approximately 40 feature services, the material for many of which was prepared and originated in States other than the State of California.

During the year 1939, an average of 39 percent of the space in the Herald was devoted to advertising. Of this advertising space, 84 percent contained advertising originating in the State of California while the remainder, 16 percent, contained advertising originating outside the State of California.

B. The Times-Mirror Company

The Times-Mirror Company, a California corporation having its principal place of business in Los Angeles, California, is engaged in the publication, distribution, and sale of The Los Angeles Times, a morning newspaper published daily, including Sunday, at its plant in Los Angeles. During the year 1939 the Times had an average daily circulation of 220,266 copies and a Sunday circulation of 367,814 copies. It is distributed throughout the State of California, principally in the metropolitan area of Los Angeles. Of the average daily circulation, approximately 1.7 percent or 3,935 copies were sold during the year 1939 outside the State of California. Of the Sunday edition, approximately 2.5 percent or 9,197 copies were

sold during the same period outside the State of California.

The principal raw materials used in printing the Times include newsprint, mats, and ink. During the year 1939, all the newsprint, having a value of $2,086,870.12, was purchased outside the State of California. During the same period, all the mats, having a value of $6,909.00, were purchased outside the State of California. The ink used, having a value of $99,476.85, was purchased in the State of California.

The Times uses the wire reports of the Associated Press, the United Press, and Dow-Jones Financial News Service. In addition, it receives wire service from the Chicago Tribune and the New York News, and obtains photographs from Wide World Photos and the Associated Press. In 1939, The Times received from national syndicates and published at least 10 feature services, among the more prominent being Walter Lippman, Westbrook Pegler, and American Institute of Public Opinion (Gallup Poll).

During the year 1939, an average of 39.9 percent of the space in the Times was devoted to advertising. Of this advertising space, 14.1 percent contained national advertising.

II. The organization involved

Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization chartered by the Congress of Industrial Organizations, ad-

mitting to membership employees of the respondents.

III. The unfair labor practices

A. The refusal to bargain collectively

1. The appropriate units

The complaints allege that the following units are appropriate for the purposes of collective bargaining: (a) full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys and (b) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys. The respondents contend that such units are inappropriate because newsboys, having interests similar to those sought to be included in the units, are excluded. We considered that contention in the Board's Decision and Direction of Elections, dated January 9, 1941, and found it to be without merit.[9] The respondents introduced no new evidence bearing upon the appropriate units in the present proceedings.

We now find, in accordance with our previous determination as to the appropriate units,[10] as did

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[9] Matter of Stockholders Publishing Company, Inc., et al. and Los Angeles Local Industrial Union No. 75, C.I.O., 28 N.L.R.B., No. 151.

[10] 28 N.L.R.B., No. 151.

the Trial Examiner, that (a) full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys and (b) all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, constitute units appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment. We further find that the aforesaid employees, at all times material herein constituted and now constitute units appropriate for the purposes of collective bargaining and that such units insure to employees of the respective respondents the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

2. Representation by the Union of a majority in the appropriate units

Pursuant to the Board's Decision and Direction of Elections, dated January 9, 1941,[1] separate elections by secret ballot were conducted under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California) on May 14, 1941, among newsboys of the Herald and on May 15, 1941, among newsboys of the Times. As a result of the elections, the Board

[1] 28 N.L.R.B., No. 151.

issued its Supplemental Decision and Certification of Representatives, dated July 30, 1941,[12] certifying that the Union had been designated and selected by a majority of all employees within the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act, the Union was the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment. No evidence was introduced in the present proceedings to rebut the presumption arising from the certification that the Union is still such representative.

We find, as did the Trial Examiner, that on and at all times after July 30, 1941, with respect to the Herald and the Times, the Union was the duly designated bargaining representative of a majority of the employees in each of the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times and is now the exclusive representative of all employees in each of the aforesaid units for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

The complaints allege, and the respondents admit in their respective answers, that on or about August 12, 1941, and thereafter, with respect to the Herald, and on or about September 3, 1941, and

[12] 33 N.L.R.B., No. 168.

thereafter, with respect to the Times, the respondents refused to bargain collectively with the Union. The answers, however, assert that such refusals to bargain were based upon "advice of competent counsel and in the bona fide belief" that the Board had no jurisdiction over the respondents with respect to their relationship with the newsboys since they were independent contractors and not employees. The respondents denied in their answers that they were engaged in commerce within the meaning of the Act.

In its Decision and Direction of Elections, dated January 9, 1941,[13] based upon the record of the representation hearing held at Los Angeles, California, from June 10 to 27, 1940, the Board held that the respondents were engaged in commerce within the meaning of Section 2 (6) and (7) of the Act, and that the newsboys of the respondents within the aforesaid appropriate units were employees within the meaning of Section 2 (3) of the Act.[14] The re-

[13] 28 N.L.R.B., No. 151.

[14] During the hearing on the complaints, the Herald stipulated that "if all witnesses called by the Union, the Board, or the respondent at the hearing at Los Angeles, California, from June 10, 1940, to June 27, 1940, were called to testify in this proceeding at this time, their testimony would be substantially the same as the testimony given at said hearing of June 10th to June 27th, 1940; . . ."; and, the Times stipulated that "the methods employed in street distribution and sale of the Los Angeles Times are substantially the same at present as they were at the time of the aforesaid hearing . . ." June 10 to 27, 1940).

spondents did not call any witnesses or introduce any other relevant documentary evidence at the present hearing.[15] We have reexamined the evidence introduced at the representation hearing. Since we see no reason to depart from our prior determination, we hold that the newsboys are employees within the meaning of Section 2 (3) of the Act.

We find, as did the Trial Examiner, that the respondent Herald on August 12, 1941, and at all times thereafter and that the respondent Times on September 3, 1941, and at all times thereafter, has each refused to bargain collectively with the Union as the exclusive representative of its employees in appropriate units and has thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of each of the respondents, set forth in Section III above, occurring in connection with the operations of each of the respondents described in Section I above, have a close, intimate,

[15] The respondents offered in evidence, and the Trial Examiner rejected, transcripts of testimony in workmen's compensation proceedings, involving news vendors and publishers, and the findings of the Industrial Accident Commission of California in such proceedings. We hereby affirm the Trial Examiner's ruling.

and substantial relation to trade, traffic, and commerce among the several States and tend to lead to traffic disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Since we have found that the respondents have engaged in unfair labor practices, we will order that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We have found that the respondents have refused to bargain collectively with the Union as the representative of a majority of the employees in appropriate units. We will therefore order that the respondents, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the cases, the Board makes the following:

CONCLUSIONS OF LAW

1. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. The following employees of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) of Los Angeles, California, at all times material herein, constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Sec-

tion 9 (b) of the National Labor Relations Act: all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys.

3. The following employees of The Times Mirror Company of Los Angeles, California, at all times material herein, constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys.

4. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., has been at all times material herein and still is the exclusive representative of all employees in each of the aforesaid units for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with Los Angeles Newspaper Local Industrial Union No. 75, C. I. O., as the exclusive representative of all its employees in an appropriate unit, each of the respondents has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

6. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have

engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of its employees who are full-time newsboys and checkmen, engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys.

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing;

and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of its employees who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, The Times-Mirror Company, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of its employees who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Upon request bargain collectively with

Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of its employees who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, with respect to rates of pay, wages, hours or employment, and other conditions of employment;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 30 day of Mar., 1942.

[Seal] HARRY A. MILLIS
Chairman
WM. M. LEISERSON
Member

GERARD D. REILLY
Member
[Seal] NATIONAL LABOR RELATIONS BOARD

[Title of Board and Causes.]
Case No. C-2023
Case No. C-2024

AFFIDAVIT AS TO SERVICE

District of Columbia,—ss:

I, James B. Minor being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 30th day of March 1942, I mailed postpaid, bearing government frank, by registered mail, a copy of the Decision and Order to the following named persons, addressed to them at the following addresses:

Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.
Att: Mr. Pat Comorre
212 West Third Street
Los Angeles, California—69101.
Hearst Publications, Inc.
1243 Trenton, Los Angeles, Calif.—69102.
Times Mirror Co.
202 W. First St., Los Angeles, Calif.—69103.
Flint & MacKay
1232 Rowan Bldg.
Los Angeles, Calif.—69104.

Cosgrove & O'Neil
1031 Rowan Bldg.
Los Angeles, Calif.—69105.
Harvey J. Kelly, Esq.
H Bar H Ranch
Harrison, Idaho—69106.

JAMES B. MINOR

Subscribed and sworn to before me this 30th day of March, 1942.

[Seal] KATHRYN B. HARRELL
Notary Public D. C.

My commission expires Mar. 1, 1947.

Form 3811 Rev. 1-4-40.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of addressee)—
L. A. Newsboys Local Industrial Union No. 75, C. I. O.

2. (Signature of addressee's agent—Agent should enter addressee's name on line ONE above)—
Francis Comorre.

Date of delivery 4/1/1942.

Post Office Department
Official Business
Penalty for private use to avoid payment of postage, $300.

Postmark of delivering office.

Return to (Name of Sender)

Street and Number, or Post Office Box,
Registered Article No. 69101.
Insured Parcel.
Los Angeles, Calif., Apr. 1, 1942. 9 P.M.
Washington,
National Labor Relations Board.

Form 3811 Rev. 1-4-40.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of addressee)—
Hearst Publications, Inc.

2. (Signature of addressee's agent—Agent should enter addressee's name on line ONE above)—
Charles Wallach.

Date of delivery Apr. 1, 1942.

Post Office Department
Official Business
Penalty for private use to avoid payment of postage, $300.

Postmark of delivering office.

Return to (Name of Sender)
Street and Number, or Post Office Box,
Registered Article No. 69102.
Insured Parcel.
Los Angeles, Calif., Apr. 1, 1942. 11 A.M.
Washington, D. C.
National Labor Relations Board.
Form 3811 Rev. 1-4-40.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of addressee)—
Times-Mirror Co.

2. (Signature of addressee's agent—Agent should enter addressee's name on line ONE above)—
Frank Paul.

Date of delivery Apr. 1, 1942.

Post Office Department

Official Business

Penalty for private use to avoid payment of postage, $300.

Postmark of delivering office.

Return to (Name of Sender)

Street and Number, or Post Office Box.

Registered Article No. 69103.

Insured Parcel.

Los Angeles, Calif., Apr. 1, 1942. 9 P.M.

Washington, D. C.

National Labor Relations Board.

Form 3811 Rev. 1-4-40.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of addressee)—
Flint & MacKay

2. (Signature of addressee's agent—Agent should enter addressee's name on line ONE above)—
L. Keller.

Date of delivery 4/1/1942.

Post Office Department

Official Business

Penalty for private use to avoid payment of postage, $300.

Postmark of delivering office.

Return to (Name of Sender)

Street and Number, or Post Office Box.

Registered Article No. 69104.

Insured Parcel.

Los Angeles, Calif., Apr. 1, 1942. 9 P.M.

Washington, D. C.

National Labor Relations Board.

Form 3811 Rev. 1-4-40.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of addressee)—
Cosgrove & O'Neil

2. (Signature of addressee's agent—Agent should enter addressee's name on line ONE above)—
Louise Elmers.

Date of delivery 4/1/1942.

Post Office Department

Official Business

Penalty for private use to avoid payment of postage, $300.

Postmark of delivering office.
Return to (Name of Sender)
Street and Number, or Post Office Box,
Registered Article No. 69105.
Insured Parcel.
Los Angeles, Calif., Apr. 1, 1942. 9 P.M.
Washington, D. C.
National Labor Relations Board.

Form 3811 Rev. 1-4-40.

RETURN RECEIPT

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

1. (Signature or name of addressee)—
Harvy J. Kelly

2. (Signature of addressee's agent—Agent should enter addressee's name on line ONE above)—
Mrs. Harvy J. Kelly.

Date of delivery 4/4/1942.
Post Office Department
Official Business
Penalty for private use to avoid payment of postage, $300.
Postmark of delivering office.
Return to (Name of Sender)
Street and Number, or Post Office Box,
Registered Article No. 69106.
Insured Parcel.
Los Angeles, Calif., Apr. 4, 1942. 3 P.M.
Washington, D. C.
National Labor Relations Board.

BOARD EXHIBIT No. 1-A-1

[Title of Board and Cause.]

Case No. XXI-C-1956

COMPLAINT

It having been charged by Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., chartered by the Congress of Industrial Organizations, that Hearst Publications, Incorporated (Los Angeles Examiner Department), hereinafter called "Respondent," has engaged in and is engaging in at Los Angeles, California, certain unfair labor practices affecting commerce as set forth and defined in National Labor Relations Act, approved July 5, 1935, 49 Stat. 449, hereinafter referred to as "Act," the National Labor Relations Board, by its Regional Director for its Twenty-first Region, designated as agent of said Board by Article IV, Section 1, subsection (c), and Article II, Section 5 of its Rules and Regulations, Series 2, as amended, hereby issues its Complaint and alleges the following:

Hearst Publications, Incorporated, is and, at all times hereinafter referred to, has been a corporation, organized and existing under and by virtue of the laws of the State of California. Said corporation has its principal office and place of business in San Francisco, California. It is engaged in the publication, distribution, and sale of various daily and Sunday newspapers including Los Angeles Examiner, hereinafter referred to as "Examiner."

2. The Examiner is a morning newspaper published daily, including Sunday, at its plant in Los

Angeles, California. Said paper is distributed throughout the State of California but principally in the metropolitan area of Los Angeles. In addition a substantial portion of its daily circulation is sold and distributed outside the State of California.

3. Respondent, in the conduct of its above-described business of publishing, selling, and distributing the Examiner, causes and continuously has caused large quantities of raw materials used in its business, including specifically but without limitation thereby, newsprint and mats to be transported into the State of California from other states of the United States and from foreign countries.

4. Respondent, in the conduct of its above-described business of publishing, selling, and distributing the Examiner, daily supplies news to and daily receives news from several well-known news services which gather and disseminate news nationally and internationally. Said Respondent in the conduct of this business likewise daily receives and publishes numerous feature services, the material for many of which is prepared and originates in states of the United States other than the State of California. Further, said Respondent in the conduct of this business daily publishes in substantial amounts advertising originating outside the State of California.

5. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., hereinafter called "Union" is a labor organization within the meaning of Section 2, subsection (5) of the Act.

6. A unit for the purposes of collective bargain-

ling, composed of all employees of Respondent who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, would insure to such employees of Respondent the full benefit of their right to self-organization and to collective bargaining and would otherwise effectuate the policies of the Act. Said unit is, therefore, appropriate for the purposes of collective bargaining between the representatives of such employees of Respondent and Respondent.

7. By May 15, 1941, or before that date, a majority of the employees of Respondent within the unit set forth in paragraph 6 had designated the Union as their representative for the purpose of bargaining collectively with Respondent with respect to their compensation, hours of employment and other conditions of employment. This majority status of the Union within this unit has continued up to and including the date of this Complaint.

8. Since on or about November 14, 1941, Respondent, while engaged in its above-described business at Los Angeles, California, has continuously failed and or refused and does now fail and or refuse to bargain collectively in good faith with the Union.

9. By this continuous failure and or refusal to bargain with the Union as set out in the immediately preceding paragraph, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of the Act.

10. The acts of Respondent set out in paragraph 8 occurring in connection with the operation of its business as described in paragraphs 1, 2, 3, and 4 have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

11. The acts of Respondent set out in paragraph 8 constitute unfair labor practices affecting commerce and the free flow of commerce within the meaning of Section 8, subsections (1) and (5) and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on the 5th day of December, 1941, issues its Complaint against the Hearst Publications, Incorporated (Los Angeles Examiner Department), Respondent herein.

NOTICE OF HEARING

Please take notice that on the 15th day of December, 1941, in Room 808, U. S. Postoffice & Courthouse Building, Los Angeles, California, at 10:00 o'clock in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with its Rules and Regulations—Series 2, as amended, Article IV and Article II, Section 23, on the allegations set forth in the Complaint hereinabove set forth, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Twenty-first (21st) Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the foregoing Complaint, on or before the 15th day of December, 1941.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 2, as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

Please take notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown directs that a given exhibit need not be duplicated.

In witness whereof, the National Labor Relations Board has caused this, its Complaint and its Notice of Hearing, to be signed by the Regional Director for the Twenty-first (21st) Region on the 5 day of December, 1941.

/s/ WM. R. WALSH
Regional Director, 21st Region
National Labor Relations Board
808 U. S. Portoffice & Courthouse Bldg.
Los Angeles, California

EXHIBIT No. 1-A-2

United States of America

Before the National Labor Relations Board
21st Region

Case No. XXI C 1956

Date filed 11/21, 1941

In the Matter of HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Hearst Publications, Incorporated (Los Angeles Examiner Department), 1111 S. Broadway, Los Angeles, California, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that said Company, through its officers and agents, has refused to recognize, deal with, and/or bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O, since on or about November 14, 1941, as the exclusive representative of those employees of said Company for which said Union was certified on October 20, 1941 as said exclusive bargaining representative by the National Labor Relations Board.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.
By PAT COMORRE,
Secretary.
212 W. 3rd St., Los Angeles, Calif.
(MU-5747)

Subscribed and sworn to before me this 21st day of November, 1941, at Los Angeles, Calif.

JAMES A. COBEY,
Attorney, National Labor Relations Board, 21st Region.

BOARD EXHIBIT No. 1-B

United States of America

National Labor Relations Board

I, Beatrice M. Stern, Executive Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

ORDER CONSOLIDATING CASES

In the matter of

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT) and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.—CASE NO. XXI-C-1956

STOCKHOLDERS PUBLISHING COMPANY, INC. and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.—CASE No. XXI-C-1957.

In Witness Whereof, I have hereunto subscribed ... name and caused the seal of the National Labor Relations Board to be affixed this 6th day of December, A. D. 1941, at Washington, D. C.

[Seal] Executive Secretary.

[Title of Board and Causes.]

Case No. XXI-C-1956
Case No. XXI-C-1957

ORDER CONSOLIDATING CASES

Charges, pursuant to Section 10(b) of the Act, having been filed in the above-entitled cases, and the Board having duly considered the matter, and deeming it necessary in order to effectuate the purposes of the National Labor Relations Act,

It Is Hereby Ordered, pursuant to Article II, Section 36(b), of National Labor Relations Board Rules and Regulations—Series 2, as amended, that these cases be, and they hereby are, consolidated.

Dated, Washington, D. C., December 3, 1941.

By direction of the Board:

[Seal] BEATRICE M. STERN,
Executive Secretary.

BOARD EXHIBIT No. 1-C

[Title of Board and Cause.]

Case No. XXI-C-1956

MOTION TO DISMISS COMPLAINT

Comes now Hearst Publications, Incorporated (Los Angeles Examiner Department), and appearing for itself alone, and appearing specially and not generally, and only for the purpose of this motion, moves to dismiss the complaint issued herein by the National Labor Relations Board through its Regional Director for the Twenty-first Region.

Said motion is made on each and all of the following grounds:

1. That the National Labor Relations Board has no jurisdiction over respondent.

2. That respondent is not engaged in commerce among the several states, or between the District of Columbia or any territory of the United States and any state or other territory or between any foreign

country or any state, territory or the District of Columbia or within the District of Columbia or any territory or between points in the same state or territory or any other state or territory or the District of Columbia or any foreign country, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

3. That no member of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. is an employee of respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

4. That the persons particularly referred to in paragraph 6 of the complaint, to wit, newsboys engaged in the street sale of the Los Angeles Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, are not employees of, nor is any one of them an employee of, this respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

5. That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., and the newsboys mentioned in the complaint, are engaged solely in intrastate commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

6. That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., and the newsboys referred to in the complaint, are not engaged in interstate commerce, or in any business

activities having a close, intimate, substantial or any relation to trade, traffic or commerce among the several states or the territories of the United States and foreign countries, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

7. That no refusal of respondent to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. can burden or obstruct commerce, and such refusal can not and has not led or tended to lead, and can not and does not now, and will not, lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

8. That no cessation of the news vending activities of members of Los Angeles Newsboys Local Union No. 75, C. I. O., or of the newsboys referred to in the complaint, or any of them, can or will burden or obstruct commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

9. That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., or of the newsboys referred to in the complaint, or any of them, can or will lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

10. That each and all of the newsboys referred

to in paragraph 6 of the complaint, to wit, newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, excluding temporary newsboys, is and are independent contractors.

11. That the National Labor Relations Board has no jurisdiction over the relations of this respondent with persons engaged in the independent business of vending the newspapers published by this respondent.

This motion is made by respondent in reliance upon the rights granted by Article II, Sections 14 to 18, inclusive, of Rules and Regulations, Series 2, as amended, of the National Labor Relations Board; and its right to make this motion, or to object to any ruling upon the same shall not be deemed waived by the filing of an answer or by other participation by this respondent in the proceedings before the Trial Examiner or the Board.

Dated: At Los Angeles, California, this 12th day of December, 1941.

LAWLER, FELIX & HALL,
A. LAURENCE MITCHELL,
By JOHN M. HALL,
Attorneys for Hearst Publications, Incorporated (Los Angeles Examiner Department).

BOARD EXHIBIT No. 1-D

[Title of Board and Cause]

Case No. XXI-C-1956.

ANSWER OF HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT)

Comes now Hearst Publications, Incorporated (Los Angeles Examiner Department), hereinafter called "respondent," and reserving all rights asserted in all pleadings and documents heretofore filed by it in Case No. XXI-R-1084, being also Case No. XXI-R-1926, and under its Motion to Dismiss Complaint filed concurrently herewith, files this its answer to the complaint issued herein by National Labor Relations Board through its Regional Director for the Twenty-first Region.

1. Admits the allegations of paragraph 1 of the complaint, but in this connection alleges that Los Angeles Examiner is published at its plant situated in Los Angeles, California, in which plant no other business is conducted, and that the publication, distribution and sale of Los Angeles Examiner is a separate business enterprise of Los Angeles Examiner Department of Hearst Publications, Incorporated, with which no other department of Hearst Publications, Incorporated, has any connection.

2. Answering paragraph 2 of the complaint, respondent denies that a considerable or any substantial portion of the daily or Sunday, or daily and Sunday, circulation of Los Angeles Examiner is sold

or distributed outside the State of California, and in this connection alleges that on the average not to exceed 2% of its daily (exclusive of Sunday) circulation and not to exceed 9% of its Sunday circulation is sold or distributed outside the State of California, and that none of the newsboys included within the Union referred to in the complaint, or the unit for purposes of collective bargaining referred to in the complaint, were or are engaged in any transaction or operation connected with or relating to the sale or distribution of said newspaper outside the State of California.

3. Answering paragraph 3 of the complaint, respondent admits that in the conduct of its business respondent uses large quantities of newsprint and mats; denies specifically each and every allegation of paragraph 3 of the complaint not in this paragraph specifically admitted.

4. Admits the allegations of paragraph 4 of said complaint.

5. Denies specifically the allegations of paragraph 5 of the complaint.

6. Denies specifically the allegations of paragraph 6 of said complaint.

7. Denies specifically the allegations of paragraph 7 of the complaint.

8. Admits the allegations of paragraph 8 of the complaint, but in explanation of this admission alleges that it has in good faith refused to bargain collectively with Los Angeles Local Industrial Un-

ion No. 75, C. I. O. upon the advice of competent counsel and in the bona fide belief that the National Labor Relations Board had and has no jurisdiction over respondent with respect to respondent's relationship with the newsboys referred to in the complaint, who are independent contractors and not employees.

9. Answering paragraph 9 of said complaint, respondent denies that by reason of continuous or any failure or refusal to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as alleged in paragraph 8 of the complaint respondent has engaged in or is engaging in an unfair labor practice, or unfair labor practices, within the meaning of Section 8, Subsection (1), or Section 8, Subsection (5) of the National Labor Relations Act.

10. Denies specifically the allegations of paragraph 10 of the complaint.

11. Denies specifically the allegations of paragraph 11 of said complaint.

For a Second, Separate and Further Defense and Answer, Respondent Alleges:

That the National Labor Relations Board has no jurisdiction over respondent.

For a Third, Separate and Further Defense and Answer, Respondent Alleges:

That respondent is not engaged in commerce among the several states, or between the District of Columbia or any territory of the United States and any state or other territory or between any foreign country or any state, territory or the District of

Columbia or within the District of Columbia or any territory or between points in the same state or territory or any other state or territory or the District of Columbia or any foreign country, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a Fourth, Separate and Further Defense and Answer, Respondent Alleges:

That no member of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. is an employee of respondent, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a Fifth, Separate and Further Defense and Answer, Respondent Alleges:

That the persons particularly referred to in paragraph 6 of said complaint, to wit, newsboys engaged in the street sale of Los Angeles Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, are not employees of, nor is any one of them an employee of, this respondent, and therefore the National Labor Relations Board has no jurisdiction over respondent.

For a Sixth, Separate and Further Defense and Answer, Respondent Alleges:

That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. and the newsboys mentioned in the complaint, are engaged solely in intrastate commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a Seventh, Separate and Further Defense and Answer, Respondent Alleges:

That the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., and the newsboys referred to in the complaint, are not engaged in interstate commerce, or in any business activity having a close, intimate, substantial or any relation to trade, traffic or commerce among the several states or the territories of the United States and foreign countries, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For an Eighth, Separate and Further Defense and Answer, Respondent Alleges:

That no refusal or respondent to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. can burden or obstruct commerce, and such refusal cannot and has not led or tended to lead, and can not and does not now, and will not lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For a Ninth, Separate and Further Defense and Answer, Respondent Alleges:

That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., or of the newsboys referred to in the complaint, or any of them, can or will burden or obstruct commerce or the free flow of commerce, and, therefore, the National Labor Re-

lations Board has no jurisdiction over respondent.

For a Tenth, Separate and Further Defense and Answer, Respondent Alleges:

That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., or of the newsboys referred to in the complaint, or any of them, can or will lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over respondent.

For an Eleventh, Separate and Further Defense and Answer, Respondent Alleges:

That each and all of the newsboys referred to in paragraph 6 of the complaint, to wit, newsboys engaged in the street sale of Los Angeles Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, is and are independent contractors.

For a Twelfth, Separate and Further Defense and Answer, Respondent Alleges:

That the National Labor Relations Board has no jurisdiction over the relations of this respondent with persons engaged in the independent business of vending the newspapers published by this respondent.

For a Thirteenth, Separate and Further Defense and Answer, Respondent Alleges:

That the Industrial Accident Commission of the State of California, in a decision rendered on August 26, 1941, has ruled that a newsboy (not a temporary newsboy) engaged in the street sale of Los Angeles Examiner at an established spot 4 or more hours a day, 5 or more days a week, within Los Angeles, California, is not an employee of respondent, but on the contrary, is an independent contractor. This decision is entitled: "Abe Goren, Applicant, vs. Hearst Publications, Inc., a corporation, and Pacific Employers Insurance Company, a corporation, Defendants." A copy of said decision is attached hereto, marked "Exhibit A" and made a part hereof.

Wherefore, respondent prays that the complaint herein be dismissed.

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT), a corporation, 1111 South Broadway, Los Angeles, California.

LAWLER, FELIX & HALL,
A. LAURENCE MITCHELL,
By JOHN M. HALL,
Attorneys for Hearst Publications, Incorporated (Los Angeles Examiner Department).

(Duly verified)

EXHIBIT "A".

Before the Industrial Accident Commission of the State of California

Claim No. L. A. 53-671

ABE GOREN,

Applicant,

vs

HEARST PUBLICATIONS, INC., a corporation, and PACIFIC EMPLOYERS INSURANCE COMPANY, a corporation,

Defendants.

FINDINGS AND AWARD.

Filed August 26, 1941.

F. B. McConnell, attorney for Pacific Employers Ins. Co.

A. Lawrence Mitchell, attorney for employer.

An application for adjustment of claim for compensation having been filed herein, and all parties having appeared, and the matter having been regularly submitted for decision, W. Bond, Referee, makes his Findings and Award as follows:

FINDINGS OF FACT.

Abe Goren, applicant, occupation news vendor, sustained an injury on February 28, 1941, when he was struck by an automobile at Los Angeles, California.

2. On said date said defendant Hearst Publications, Inc., a corporation, was insured under the compensation laws by Pacific Employers Insurance Company, a corporation.

3. The evidence does not establish that said applicant was on said date an employee of the defendant Hearst Publications, Inc., a corporation, or an employee at all, but that on said date said employee was an independent contractor and that the title to the newspapers sold by him actually passed from said defendant Hearst Publications, Inc., a corporation, to said applicant within the meaning of Section 352-c of the Labor Code.

AWARD

Now, Therefore, It Is Ordered that applicant take nothing by reason of the claim asserted and that said defendants be relieved from liability and discharged herefrom.

W. BOND,
Referee, Industrial Accident Commission.

Dated at Los Angeles, California, Aug. 26, 1941.
WB:EA
L A 53-671

BOARD'S EXHIBIT No. 2-A-1

[Title of Board and Cause.]

Case No. XXI-C-1957

COMPLAINT

It having been charged by Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., chartered by the Congress of Industrial Organizations, that Stockholders Publishing Company, Inc., hereinafter called "Respondent," has engaged in and is engaging in at Los Angeles, California, certain unfair labor practices affecting commerce as set forth and defined in National Labor Relations Act, approved July 5, 1935, 49 Stat. 449, hereinafter referred to as "Act," the National Labor Relations Board, by its Regional Director for its Twenty-first Region, designated as agent of said Board by Article IV, Section 1, subsection (c), and Article II, Section 5 of its Rules and Regulations, Series 2, as amended, hereby issues its Complaint and alleges the following:

1. Respondent is and, at all times hereinafter referred to, has been a corporation organized and existing under and by virtue of the laws of the State of Nevada. Said Respondent has its principal office and place of business in Los Angeles, California. It is engaged in the publication, distribution, and sale of a daily (except Sunday) newspaper "The News" hereinafter referred to as "News".

2. The News is distributed principally in the metropolitan area of Los Angeles. However a considerable portion of its circulation is sold and distributed outside the State of California.

3. Respondent, in the operation of its above-described business, causes and continuously has caused large quantities of raw materials used in its business, including specifically but without limitation thereby, newsprint and mats to be transported into the State of California from other states of the United States and from foreign countries.

4. Respondent, in the operation of its above-described business, daily publishes in substantial quantites, news, feature services and advertising received from and/or originating outside the State of California.

5. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., hereinafter called "Union" is a labor organization within the meaning of Section 2; subsection (5) of the Act.

6. A unit for the purposes of collective bargaining composed of all employees of Respondent who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys, would insure to such employees of Respondent the full benefit of their rights to self-organization and to collective bargaining and would otherwise effectuate the policies of the Act. Said unit is, therefore, appropriate for the purposes of

collective bargaining between the representatives of such employees and Respondent.

7. By May 14, 1941, or before that date, a majority of the employees of Respondent within the unit set forth in paragraph 6 had desginated the Union as their representative for the purpose of bargaining collectively with Respondent with respect to their compensation, hours of employment and other conditions of employment. This majority status of the Union within this unit has continued up to and including the date of this Complaint.

8. Since on or about August 27, 1941, Respondent, while engaged in its above-described business at Los Angeles, California, has continuously failed and/or refused and does now fail and/or refuse to bargain collectively in good faith with the Union.

9. By this continuous failure and/or refusal to bargain with the Union as set out in the immediately preceding paragraph, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsection (1) and (5) of the Act.

10. The acts of Respondent set out in paragraph 8 occurring in connection with the operation of its business as described in paragraphs 1, 2, 3, and 4 have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

11. The acts of Respondent set out in para-

graph 8 constitute unfair labor practices affecting commerce and the free flow of commerce within the meaning of Section 8, subsections (1) and (5) and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on the 5th day of December, 1941, issues its Complaint against the Stockholders Publishing Company, Inc., Respondent herein.

NOTICE OF HEARING

Please take notice that on the 15th day of December, 1941, in Room 808, U. S. Postoffice & Courthouse Building, Los Angeles, California, at 10:00 o'clock in the forenoon a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with its Rules and Regulations—Series 2, as amended, Article IV and Article II, Section 23, on the allegations set forth in the Complaint hereinabove set forth, at which time and place you will have the right to appear in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Twenty-first (21st) Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the foregoing Complaint, on or before the 15th day of December, 1941.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 2, as amended, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is

particularly directed to Article II of said Rules and Regulations.

Please take notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown directs that a given exhibit need not be duplicated.

In witness whereof, the National Labor Relations Board has caused this, its Complaint and its Notice of Hearing, to be signed by the Regional Director for the Twenty-first (21st) Region on the 5 day of December, 1941.

WILLIAM R. WALSH
Regional Director, 21st Region
National Labor Relations Board, 808 U. S. Postoffice & Courthouse Bldg., Los Angeles, California.

BOARD EXHIBIT No. 2-A-2

United States of America
Before the National Labor Relations Board
21st Region

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC., and LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.

Case No. XXI-C-1957
Dated filed 11/21, 1941

CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Stockholders Publishing Company, Inc., 1257 S. Los Angeles St., Los Angeles, Cal. has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that said Company, through its officers and agents, has refused to recognize, deal with, and/or bargain with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. since on or about August 27, 1941, as the exclusive representative of those employees of said Company for which said Union was certified on July 30, 1941 as said exclusive bargaining representative by the National Labor Relations Board.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization

making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.
By PAT COMORRE
Secretary
212 W. 3rd St.,
Los Angeles, Calif.
MUtual 5747

Subscribed and sworn to before me this 21 day of November, 1941. At Los Angeles, Calif.

JAMES A. COBEY,
Attorney National Labor Relations Board, 21st Region.

BOARD EXHIBIT No. 2-E

(Space below for filing stamp only.)

Fld. 12-15-41.

Binford & Binford, Attorneys at Law, 1208 W. I. Hollingsworth Building, Los Angeles, California. Trinity 3183. Attorneys for Respondent.

[Title of Board and Cause.]

Case No. XXI-C-1957

MOTION TO DISMISS COMPLAINT

Comes now, Stockholders Publishing Company, Inc., and appearing specially and not generally, and

for itself only, and only for the purposes of this Motion, moves to dismiss the complaint issued herein by the National Labor Relations Board through its Regional Director for the Twenty-first Region.

Said motion is made on each and all of the following grounds:

1. That the National Labor Relations Board has no jurisdiction over respondent.

2. That Respondent is not engaged in commerce among the several states, or between the District of Columbia or any territory of the United States and any state or other territory or between any foreign country or any state, territory or the District of Columbia or within the District of Columbia or any territory or between points in the same state or territory or any other state or territory or the District of Columbia or any foreign country, and, therefore, the National Labor Relations Board has no jurisdiction over Respondent.

3. That no member of Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. is an employee of Respondent, and therefore, the National Labor Relations Board has no jurisdiction over Respondent.

4. That the persons particularly referred to in paragraph 6 of the complaint, to-wit, full-time newsboys and checkmen, operating within Los Angeles, California, in so far as their news vending activities are concerned, are not employees of, nor is any one of them an employee of, this Respondent and, therefore, the National Labor Relations Board has no jurisdiction over Respondent.

5. That the members of Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., and the full-time newsboys and checkmen mentioned in the complaint, are, in the conduct of their respective news vending activities, engaged solely in intrastate commerce, and that said persons are not in the conduct of their news vending activities engaged in interstate commerce or in any business activity having a close, intimate, substantial or any relation to trade traffic or commerce among the several states or the territories of the United States and foreign countries, and for such reasons, therefore, the National Labor Relations Board has no jurisdiction over Respondent.

6. That no refusal of Respondent to bargain with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. can burden or obstruct commerce, and such refusal can not and has not led or tended to lead, and can not and does not now, and will not, lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, therefore, the National Labor Relations Board has no jurisdiction over Respondent.

7. That no cessation of the news vending activities of members of Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., or of the full-time newsboys and checkmen, or any of them, can or will burden or obstruct commerce or the free flow of commerce, nor would such cessation lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce, and, for

such reasons therefore, the National Labor Relations Board has no jurisdiction over Respondent.

8. That the National Labor Relations Board has no jurisdiction over the relations of this Respondent with persons engaged in the independent business of vending the newspapers published by this Respondent.

This motion is made by Respondent in reliance upon the rights granted by Article II, Section 14 to 18, inclusive, of Rules and Regulations, Series 2, as amended, of the National Labor Relations Board, and its right to make this motion, or to object to any ruling upon the same shall not be deemed waived by the filing of an answer or by other participation by this Respondent in the proceedings before the Trial Examiner or the Board.

Dated at Los Angeles, California, this 11th day of December, 1941.

BINFORD & BINFORD
By L. B. BINFORD
HOWARD M. BINFORD
Attorneys for Stockholders Publishing Company, Inc.

BOARD EXHIBIT No. 2-F

(Space below for filing stamp only.)

Fld. 12-15-41.

Binford & Binford, Attorneys at Law, 1208 W. I. Hollingsworth Building, Los Angeles, California. Trinity 3183. Attorneys for Respondent.

[Title of Board and Cause.]

Case No. XXI-C-1957

ANSWER OF STOCKHOLDERS PUBLISHING COMPANY, INC.

Comes now Stockholders Publishing Company, Inc., hereinafter called Respondent, and reserving all rights claimed or asserted in any and all pleadings and documents heretofore filed by it in the within case, and reserving all rights under its motion to dismiss said complaint filed concurrently herewith, files this its Answer to the said Complaint issued herein by National Labor Relations Board, through its Regional Director for the 21st Region.

I.

Respondent admits paragraph numbered 1 in said complaint contained.

II.

For its answer to paragraph numbered 2 of said Complaint, Respondent admits that its newspaper "Daily News" is distributed principally in the metropolitan area of the City of Los Angeles, but denies that a "considerable portion" of its circulation is sold and distributed outside of the State of California, and in this respect Respondent alleges that the average daily circulation of its newspaper sold and distributed outside of the State of California does not exceed .031% of its total average daily circulation.

III.

Respondent admits paragraph numbered 3 in said complaint contained.

IV.

Respondent admits the allegations of paragraph numbered 4 of said complaint.

V.

Respondent denies generally and specifically the allegations of paragraph numbered 5 of said complaint.

VI.

Respondent denies generally and specifically the allegations of paragraph numbered 6 of said complaint.

VII.

Respondent denies generally and specifically the allegations of paragraph numbered 7 of said complaint.

VIII.

Respondent admits the allegations of paragraph numbered 8 of said complaint, but avers in this respect that it has at all times maintained and is continuing to maintain a long established policy of meeting and dealing with newsboys or news venders selling Respondent's newspaper, or with representatives of such newsboys or news venders, but admits that it has refused to bargain collectively with Los Angeles Newsboys Local Industrial Union #75, C.I.O.; that such refusal was and is induced by the bonafide belief of Respondent that the National Labor Relations Board has not and never has had jurisdiction over Respondent with respect to Respondent's relationship with newsboys and news venders selling Respondent's newspaper, in that Re-

spondent avers and maintains that such newsboys and news venders are not employees of Respondent, but are, and always have been, independent contractors and operators. That in reaching such conclusions Respondent has been guided by legal advice given to Respondent by its counsel, and has acted in good faith upon such advice.

IX.

Answering paragraph numbered 9 in said complaint contained, Respondent denies that by reason of continuous or any failure or refusal to bargain with the Union Respondent has engaged in or is engaging in any unfair labor practice or practices within the meaning of Section 8, Subsection 1, or Section 8, Subsection 5, of the National Labor Relations Act, for the reasons, amongst others, more specifically set forth in the preceding paragraph, being Respondent's answer to paragraph numbered 8 of said complaint.

X.

Respondent generally and specifically denies all of the allegations of paragraph numbered 10 of said complaint.

XI.

Respondent generally and specifically denies all of the allegations of paragraph numbered 11 of said complaint.

For a second, separate, further and independent defense and answer to said complaint, Respondent alleges:

That the National Labor Relations Board has no jurisdiction over respondent with respect to the matters referred to in said complaint.

For a third, separate, further and independent defense and answer to said complaint, Respondent alleges:

That Respondent is not engaged in commerce among the several states of the United States or between the District of Columbia or any territory of the United States and any state or other territory, or between any foreign country or any state, territory or the District of Columbia. That Respondent is not engaged in inter-state commerce; that therefore the National Labor Relations Board has no jurisdiction of or *other* Respondent.

That no member of the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is an employee of Respondent; that the persons particularly referred to in paragraph numbered 6 of said complaint, being full time newsboys and check men operating in Los Angeles, California, are not, insofar as their news vending activities are concerned, employees of, nor is any one of them an employee of, Respondent; that for such reason the National Labor Relations Board has no jurisdiction over Respondent.

For a fourth, separate, further and independent defense and answer to said complaint, Respondent alleges:

That the members of the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., and the full

time newsboys and check men referred to in said complaint and particularly paragraph numbered 6 thereof, in the conduct of their respective news vending activities, are engaged solely in intra-state commerce, and therefore the National Labor Relations Board has no jurisdiction over Respondent.

That such persons are not engaged in inter-state commerce or in any business activities having a close, intimate, substantial or any relation to trade, tariff or commerce among the several states or territories of the United States and foreign countries; that for such reasons the National Labor Relations Board has no jurisdiction over Respondent.

For a fourth, separate, further and independent defense and answer to said complaint, Respondent alleges:

That no refusal of Respondent to bargain with said Union can burden or did burden or obstruct commerce, and such refusal can not and has not led, and can not or does not now and will not lead or tend to lead to a labor dispute burdening or obstructing the free flow of commerce, and therefore the National Labor Relations Board has no jurisdiction over Respondent in such respects.

That no cessation of the news vending activities of members of said Union or of the full time newsboys and check men selling Respondent's paper can or will burden or obstruct commerce or the free flow of commerce, and therefore the National Labor Relations Board has no jurisdiction over Respondent.

For a fifth, separate, further and independent defense and answer to said complaint, Respondent alleges:

That the National Labor Relations Board has no jurisdiction over the relations of this Respondent with any person or persons who are engaged in the independent business of vending newspapers published by this Respondent.

Wherefore, Respondent prays that the complaint herein be dismissed, and for all appropriate orders.

BINFORD & BINFORD
By L. B. BINFORD
By HOWARD M. BINFORD
Attorneys for Respondent
STOCKHOLDERS PUBLISHING COMPANY, INC.
By R. L. SMITH
Executive Vice President and General Manager

December 10, 1941.
(Duly verified.)

BOARD EXHIBIT No. 4

[Title of Board and Cause.]

Case No. XXI-C-1956

STIPULATION.

It is hereby stipulated and agreed by and between Hearst Publications, Incorporated (Los An-

geles Examiner Department), herein and in these proceedings called "respondent," Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., herein called "Union," and the National Labor Relations Board, herein called "Board," each through its undersigned counsel or representative, that:

1. There has been no material change in the conduct of the business of respondent since the admission in evidence of "Board's Exhibit No. 18" on June 24, 1940, in the consolidated hearing held at Los Angeles, California, from June 10, 1940 to June 27, 1940, in the cases entitled: "Matter of Stockholders Publishing Company, Inc., et al., Cases Nos. R-1923 to R-1926, inclusive," involving the respondent herein.

2. If all witnesses called by the Union, the Board and respondent at the hearing at Los Angeles, California, from June 10, 1940 to June 27, 1940, were called to testify in this proceeding at this time, their testimony would be substantially the same as the testimony given at said hearing of June 10, 1940 to June 27, 1940; provided, however, that nothing herein contained shall be deemed to constitute an admission by respondent that said testimony was sufficient, or would now be sufficient, to support a finding of fact or conclusion of law that the members of said Union, or any of them, were or are employees of respondent, nor shall anything herein contained be deemed to constitute a waiver by respondent (1) of the right to contend that the evidence taken at said hearing on June 10, 1940 to

June 27, 1940, was insufficient to show that all or any of the members of Los Angeles Newsboys Industrial Union No. 75, C.I.O., or all or any of the persons within the unit held by the Board to be appropriate, were employees of respondent; or (2) of the right to contend, on all or any of the grounds urged before, at, or after said previous hearing, or on all or any of the grounds urged in respondent's motion to dismiss the complaint in this case No. XXI-C-1956, that the Board has no jurisdiction over respondent.

3. On or about November 12, 1941, the Union, by letter sent to respondent, requested that respondent meet with representatives of the Union for the purpose of negotiating a contract for newsboys pursuant to the certification of the Union issued on October 20, 1941, it being stated in said letter that said newsboys were represented by the Union. This letter was received by respondent on or about November 14, 1941, but no reply was made to it. Accordingly, on November 21, 1941, the Union filed a charge with the Regional Director for the Twenty-first Region of the National Labor Relations Board, originating these proceedings in so far as they concern the respondent. Thereafter on November 25, 1941, a conference was held at the offices of said Twenty-first Region. At such conference the Board, the respondent, and the Union were each represented and the representative of respondent in the presence of representatives of the Union stated in effect that inasmuch as its attitude was the same as that of the other newspaper publishers involved in Cases Nos.

XXI-C-1840 and XXI-C-1843, it was not willing to bargain with the Union. Accordingly there has been no bargaining between respondent and the Union.

4. Respondent by entering into this stipulation does not admit, consent or agree that the members of said Union are, or that any one of them is, employees or an employee of respondent within the purview of the National Labor Relations Act, or otherwise. Respondent does not hereby or at all consent to or subject itself to the jurisdiction of the National Labor Relations Board, nor does it waive any of the grounds of objection heretofore asserted and maintained by it in Case No. XXI-R-1084, being also Case No. R-1926, formerly pending before the National Labor Relations Board, and asserted and maintained by it in this Case No. XXI-C-1956 in its "Answer" and in its "Motion to Dismiss Complaint" filed herein.

Dated at Los Angeles, California, this 15th day of December, 1941.

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT)

By LAWLER, FELIX & HALL
A. LAURENCE MITCHELL
Its Counsel
JOHN M. HALL
(John M. Hall)

LOS ANGELES NEWSBOYS
LOCAL INDUSTRIAL
UNION No. 75, C.I.O.
By PAT COMORRE
(Pat Comorre)
Its Secretary
NATIONAL LABOR RELATIONS BOARD
By JAMES A. COBEY
(James A. Cobey)
Its Attorney

BOARD EXHIBIT No. 5

Binford & Binford, Attorneys at Law, 1208 W. I. Hollingsworth Building, Los Angeles, California. TRinity 3183, Attorneys for Respondent.

(Space below for filing stamp only)

[Title of Board and Cause.]

Case No. XXI-C-1957

STIPULATION

It Is Hereby Stipulated by and between Stockholders Publishing Company, Inc., herein called "Respondent," and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., herein called "Union", and National Labor Relations Board, herein called "Board," each through its undersigned counsel or representative, as follows:

1. That there has been no material change in

the conduct of the business of the Respondent since the admission in evidence of "Board's Exhibit No. 10" on June 19, 1940, in the consolidated hearing held in Los Angeles, California, from June 10, 1940 to June 27, 1940, in the cases entitled "Matter of Stockholders Publishing Company, Inc., et al, Cases R-1923 to R-1926, inclusive," involving the Respondent herein.

2. If all witnesses called by the Union, the Board or Respondent at the hearing at Los Angeles, California from June 10, 1940 to June 27, 1940, were called to testify in this proceeding at this time their testimony would be substantially the same as the testimony given at said hearing of June 10th to June 27th, 1940; provided, however, that nothing herein contained shall be deemed to constitute an admission by Respondent that said testimony was sufficient, or would now be sufficient, to support a finding of fact or conclusion of law that the members of said Union, or any of them, were or are, in so far as their news vending activities are concerned, employees of Respondent, nor shall anything herein contained be deemed to constitute a waiver by Respondent (1) of the right to contend that the evidence taken at said hearing on June 10th to 27th, 1940, was insufficient to show that all or any of the members of Los Angeles Newsboys, Industrial Union No. 75, C. I. O., or all or any of the persons within the unit held by the Board to be appropriate, were employees of Respondent; or (2) of the right to contend, on all or any of the grounds

urged before, at, or after said previous hearing that the Board has no jurisdiction over Respondent.

3. On or about August 26, 1941, the union, by letter sent by registered mail to the Respondent, requested the Respondent to meet with it for the purpose of bargaining collectively pursuant to the certification of the Union issued by the Board on July 30, 1941, in the aforementioned consolidated proceedings. On August 27, 1941, the Respondent acknowledged receipt of this letter. However, thereafter the Respondent failed to comply with the request; and, accordingly, on November 21, 1941, the Union filed a charge with the Regional Director for the Twenty-first Region of the Board, originating these proceedings in so far as they concern the Respondent. Thereafter on November 27, 1941, a conference was held at the offices of said Twenty-first Region. At this conference the Board, the Respondent, and the Union were each represented; and the representatives of the Respondent in the presence of the representatives of the Union stated in effect that the Respondent, although willing to continue its long established policy of meeting and dealing with representatives of the newsboys distributing and selling its newspapers, was not willing to bargain collectively with the Union under the aforementioned certification.

4. It is further stipulated and agreed that Respondent, by entering into this stipulation does not admit, consent or agree that the said members of

said Union are, or any of them is, in so far as news vending activities are concerned, employees or an employee of the Respondent, within the purview of the National Labor Relations Act or otherwise, and said Respondent does not hereby consent to or subject itself to the jurisdiction of the National Labor Relations Board, nor does it waive any of the grounds of objection heretofore asserted and maintained by it in Case No. XXI-R-928, also numbered R-1924, formerly pending before the National Labor Relations Board, and asserted and maintained by it in this case numbered XXI-C-1840 in its "Answer" and in its "Motion to Dismiss", both heretofore filed herein.

Dated at Los Angeles, California, this 11th day of December, 1941.

STOCKHOLDERS PUBLISHING COMPANY, INC.

By L. B. BINFORD,
HOWARD M. BINFORD,
Its Attorneys.

LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.

By PAT COMORRE,

NATIONAL LABOR RELATIONS BOARD,

By JAMES A. COBEY.

[Title of Board and Causes.]

Case No. XXI-C-1956[1]

Case No. XXI-C-1957

Mr. James A. Cobey, for the Board.

Lawler, Felix & Hall, by Mr. John M. Hall, of Los Angeles, California, for respondent Examiner.

Binford & Binford, by Mr. L. B. Binford, of Los Angeles, California, for respondent News.

Mr. Pat. Comonre, of Los Angeles, California, for the Union.

INTERMEDIATE REPORT

STATEMENT OF THE CASE

Upon charges duly filed[2] by Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaints, dated December 5, 1941, against Hearst Publications, Incorporated (Los Angeles Examiner Department) and

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[1] By order of the National Labor Relations Board dated December 3, 1941, Cases No. XXI-C-1956 and No. XXI-C-1957 were consolidated. The respondents excepted to this order at the hearing.

[2] The charges against Hearst Publications, Incorporated (Los Angeles Examiner Department), and against Stockholders Publishing Company, Inc., were filed on November 21, 1941.

Stockholders Publishing Company, Inc., herein called the respondents, or respectively, the Examiner and the News, alleging that the respondents had engaged in, and were engaging in, unfair labor practices affecting commerce within the meaning of Section 8 (1) and (5), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaints, accompanied by notice of hearing thereon, were duly served upon the respondents and the Union.

Concerning the unfair labor practices the complaints alleged in substance: (1) that on or about November 14, 1941, and thereafter, the Examiner, and on or about August 27, 1941, the News, refused to bargain collectively with the Union as the exclusive representative of their employees within appropriate bargaining units, although at that time said Union represented a majority of such employees, and (2) that by such refusals the respondents interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

On December 15 and December 16, respectively, the Examiner and the News filed their answers admitting certain allegations in the complaints but denying the commission of any unfair labor practices and interposing certain affirmative defenses.

Pursuant to notice, a hearing was held in Los Angeles, California, on December 16, 1941, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board

and the respondents were represented by counsel and the Union by its representative. All parties participated in the hearing. Full opportunity to be heard, to examine and cross examine witnesses and to introduce evidence bearing on the issues, was afforded all parties.

At the commencement of the hearing the respondents filed their individual motions to dismiss the complaints, based in general upon the grounds that the Board was without jurisdiction, that the persons alleged in the complaints to constitute the appropriate units for the purposes of collective bargaining were engaged solely in a business of an intra-state nature and were not employees of the respondents. The undersigned denied said motions.

Upon the record thus made, and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

FINDINGS OF FACT

I. The business of the respondents[3]

A. Hearst Publications, Incorporated (Los Angeles Examiner Department)

Hearst Publications, Incorporated, is a California

[3] On January 9, 1941, the Board issued its "Decision and Direction of Elections" in Cases R-1923 to 1926 entitled "Matter of Stockholders Publishing Company, Inc., et al", involving both the Examiner and the News and, in part, the same issues as are involved in the present proceeding. As

corporation with its principal office and place of business in San Francisco, California. It is engaged in the publication of various daily and Sunday newspapers, including the Los Angeles Examiner. The Examiner is a morning newspaper published daily, including Sunday, at its plant in Los Angeles, California. It has a daily average circulation of approximately 213,460 copies and a Sunday circulation of approximately 566,175 copies. It is distributed throughout the State of California principally in the metropolitan area of Los Angeles. Of the daily circulation, approximately 2 per cent are sold and distributed outside the State of California. Of the Sunday edition, approximately 9 per cent are sold and distributed outside the State of California.

The principal raw materials used in printing the Examiner include newsprint, mats, and ink. During the year 1939, all the newsprint, consisting of 31,470 tons, was obtained from the States of Washington

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the parties hereto stipulated at the present hearing that there had been no material change in the conduct of the respondents' businesses since the time of the hearing on which the above "Decision and Direction of Elections" was based, and that if the witnesses called by the parties in that hearing were called to testify in the present proceeding, their testimony would be substantially the same, and as the respondents introduced no relevant evidence at the present hearing, the undersigned accepts the findings in said "Decision and Direction of Elections" in cases R-1923 to 1926 (28 N. L. R. B. No. 151) insofar as they are determinative of matters material herein.

and Oregon and the Dominion of Canada. During the same period, all the mats, numbering 54,000, were obtained from the State of New York. The ink used, amounting to 1,065,581 pounds, was manufactured in the State of California.

The Examiner uses International News Service, Associated Press, and Dow-Jones Financial Service wire reports. It uses daily approximately 88,750 words obtained from these services. The Examiner supplies at least one wire service engaged in the interstate transmission of news with local news which the Examiner has collected. In 1939 the Examiner received and published approximately 58 feature services, the material for many of which was prepared and originated in States other than the State of California.

During the year 1939 an average of 32 per cent of the space in the daily and 48 per cent of the Sunday issues of the Examiner were devoted to advertising. Of this advertising space, 89.67 per cent contained advertising originating in the State of California while the remainder, 10.33 per cent, contained advertising originating outside the State of California.

B. Stockholders Publishing Company, Inc.

Stockholders Publishing Company, Inc., a Nevada corporation, having its principal place of business in Los Angeles, California, is engaged in the publication, distribution and sale of a daily (except Sunday) newspaper called "The News." The principal

raw materials used in the printing of the News consist of newsprint, mats, ink and photographic supplies. During the year 1939 all the newsprint, costing approximately $470,000, all the mats costing approximately $4,800 were obtained outside the State of California. During the same period all the ink, costing approximately $16,000, and most of the photographic supplies costing approximately $3,600, were purchased within the State of California.

The daily average circulation of the News for March, 1940, was 195,725 copies, of which .031 per cent were circulated and distributed outside the State of California.

The News uses the wire reports of United Press which furnishes news sent from outside the State of California. It uses daily approximately 27,000 words obtained from this wire service. In 1939 the News published 13 feature services which it received from service houses located outside the State of California.

During 1939, 9,909,000 lines of space was devoted to local, national, and classified advertising. Of this advertising space, 1,500,000 lines were devoted to national advertising.

II. The organization involved

Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership employees of the respondents.

III. The unfair labor practices

A. The refusal to bargain collectively

1. The appropriate unit

The complaints alleged, the Board found in its "Decision and Direction of Elections" dated January 9, 1941,[4] and as the respondents offered no contrary evidence during the present hearing, the undersigned finds that: (1) All newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week within Los Angeles, California, except temporary newsboys, and (2) all full-time newsboys and check men who are engaged to sell the News within Los Angeles, California, excluding bootjackers,[5] temporary, casual,[6] and part-time newsboys, constitute units appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, and the undersigned further finds that the aforesaid employees at all times material herein constituted and now constitute units appropriate for the purposes of collective bargaining, and that such units will insure to employees of the respondents the full benefit of their right to self

[4] 28 N.L.R.B. No. 151.

[5] A bootjacker is a newsboy who sells to the general public at places other than established corners or spots.

[6] The terms "temporary" and "casual" are used synonymously and they are here intended to have their ordinary meaning.

organization and to collective bargaining and otherwise effectuate the policies of the Act.

2. Representation by the Union of a majority in the appropriate units

As a result of elections by secret ballot conducted among the employees of the Examiner on May 17, 1941, and among the employees of the News on May 15, 1941, under the direction and supervision of the Regional Director for the Twenty-First Region (Los Angeles, California), pursuant to the aforementioned "Decision and Direction of Elections,"[7] and various amendments thereto,[8] the Board issued its "Supplemental Decision and Certification of Representatives" dated July 30, 1941,[9] and its "Supplemental Decision and Certification of Representatives" dated October 20, 1941,[10] in which it certified that the Union had been designated and selected by a majority of all employees within the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act the Union was the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

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[7]See footnote (4) above.

[8]29 N.L.R.B. No. 16; 29 N.L.R.B. No. 16 (a); 30 N.L.R.B. No. 110; 30 N.L.R.B. No. 110 (a); 31 N.L.R.B. No. 115.

[9]33 N.L.R.B. No. 168.

[10]36 N.L.R.B. No. 51.

As the respondents offered no evidence on this point at the present hearing, the undersigned finds that on, and at all times after, October 20, 1941, in respect to the Examiner, and on, and at all times after, July 30, 1941, in respect to the News, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate units, and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times, and is now, the exclusive representative of all the employees in the aforesaid units for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

3. The refusal to bargain

The complaints alleged, and the answers of the respondents admitted, that on or about November 14, 1941, and thereafter in respect to the Examiner, and on or about August 27, 1941, and thereafter, in respect to the News, the respondents refused to bargain collectively with the Union. The answers of the respondents plead in justification that such refusals to bargain were based upon advice of competent counsel and in the bona fide belief that the Board had no jurisdiction over the respondents in respect to their relationship with their news vendors who, the answers alleged, were independent contractors and not employees, and who, according to the answers, were engaged in business of an intrastate character solely. The aforementioned answers further denied that the respondents were engaged in interstate commerce

within the meaning of the Act. As the Board, in its "Decision and Direction of Elections" in Cases No. R-1923 to 1926, inclusive, held that the respondents were engaged in interstate commerce, and therefore within the jurisdiction of the Act, that the news vendors were employees of the respondents, and as the respondents offered no relevant evidence at the present hearing to the contrary, the undersigned finds that the respondents' plea in justification is without merit.

The undersigned finds that the respondent Examiner on November 14, 1941, and the respondent News on August 27, 1941, and at all times thereafter, have refused to bargain collectively with the Union as the exclusive representative of their employees in the appropriate units and have thereby interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of the respondents, set forth in Section III above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Since it has been found that the respondents have engaged in unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action, designed to effectuate the policies of the Act.

It has been found that each respondent has refused to bargain collectively with the Union as the representative of a majority of the employees in the appropriate unit, pertaining to said respondent. It will therefore be recommended that the respondents bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization within the meaning of Section 2 (5) of the Act.

2. The following employees of Hearst Publications, Incorporated (Los Angeles Examiner Department), at all times material herein, constituted, and now constitute, the unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: All newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week within Los Angeles, California, except temporary newsboys.

3. The following employees of Stockholders Pub-

lishing Company, Inc., at all times material herein, constituted, and now constitute, the unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: All fulltime newsboys and checkmen who are engaged to sell the News within Los Angeles, California; excluding bootjackers, temporary, casual and part-time newsboys.

4. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., has been at all times material herein the exclusive representative of all employees in the aforesaid units for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as exclusive representative of all their employees in the aforesaid appropriate units, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

6. By interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent Hearst Publications, Incorporated (Los Angeles Examiner Department), and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75 C.I.O., as the exclusive bargaining representative of all newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week, within Los Angeles, California, except temporary newsboys.

(b) Engaging in any like, or related, acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive representative of all newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week, within Los Angeles, California, except temporary newsboys, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post notices immediately in conspicuous places in its plant and office at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a) and (b) of these recommendations and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

(c) Notify the Regional Director for the Twenty-First Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the respondent Stockholders Publishing Company, Inc., and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive bargaining representative of all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys.

(b) Engaging in any like, or related, acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive representative of all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys in respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) Post notices immediately in conspicuous places in its plant and office at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a) and (b) of these recommendations and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations.

(c) Notify the Regional Director for the Twenty-First Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report the respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended—any party may within thirty (30) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D.C., an original and four

copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within twenty (20) days after the date of the order transferring the case to the Board.

Dated: January 7, 1942

THOS. S. WILSON,
Trial Examiner.

[Title of Board and Cause.]

Case No. C-2050 (XXI-C-1956)

EXCEPTIONS OF HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT), TO THE INTERMEDIATE REPORT AND OTHER PARTS OF THE RECORD AND PROCEEDINGS.

(Stamped): Received original and copies of exceptions.

Comes now Hearst Publications, Incorporated (Los Angeles Examiner Department), respondent herein, and files this, its Exceptions to the Intermediate Report of the Trial Examiner, Honorable Thos. S. Wilson, and to other parts of the record and proceedings (including rulings on motions and

objections) and to findings, conclusions of law and rulings as hereinafter specified in Case No. R-1926, also numbered XXI-R-1084.

Said Intermediate Report is dated January 7, 1942, and the above entitled and numbered case was transferred to and continued before the Board pursuant to order of the Board dated January 10, 1942.

These Exceptions are filed pursuant to Article II, Section 33, of National Labor Relations Board Rules and Regulations, Series 2, as amended.

Exceptions to Intermediate Report,
Dated January 7, 1942.

(1) To "Finding II. The organization involved," appearing on page 4 of the Intermediate Report, reading as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership employees of the respondents."
>
> (Page 4, lines 1 to 5.)

(2) To that portion of Finding contained in Section 1, entitled "The appropriate unit," of subparagraph A of paragraph III, appearing on page 4 of said Intermediate Report, reading as follows:

> "* * * the undersigned finds that: (1) All newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week within Los Angeles, California, except temporary

newsboys, * * * constitute units appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment, and the undersigned further finds that the aforesaid employees at all times material herein constituted and now constitute units appropriate for the purposes of collective bargaining, and that such units will insure to employees of the respondents the full benefit of their right to self organization and to collective bargaining and otherwise effectuates the policies of the Act."

(Page 4, lines 11 to 29.)

(3) To that portion of Finding contained in Section 2, entitled "Representation by the Union of a majority in the appropriate units," of subparagraph A of paragraph III, appearing on pages 4 and 5 of said Intermediate Report, reading as follows:

"* * * the undersigned finds that, on, and at all times after, October 20, 1941, in respect to the Examiner, * * * the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate units, and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times, and is now, the exclusive representative of all the employees in the aforesaid units for the purposes of col-

lective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment."

(Page 4, line 50 to page 5, line 8.)

(4) To those portions of Finding contained in Section 3, entitled "The refusal to bargain," of subparagraph A of paragraph III, appearing on page 5 of said Intermediate Report, reading as follows:

"* * * and as the respondents offered no relevant evidence at the present hearing to the contrary, the undersigned finds that the respondents' plea in justification is without merit.

"The undersigned finds that the respondent Examiner on November 14, 1941, * * * and at all times thereafter, have refused to bargain collectively with the Union as the exclusive representative of their employees in the appropriate units and have thereby interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act."

(Page 5, lines 28 to 37.)

(5) To Finding IV, entitled "The effect of the unfair labor practices upon commerce," appearing on page 5 of said Intermediate Report, reading as follows:

"The activities of the respondents, set forth in Section III above, occurring in connection with the operations of the respondents described

in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(Page 5, lines 39 to 47.)

(6) To Finding V, entitled "The remedy," appearing on page 5 of the Intermediate Report, and reading as follows:

"Since it has been found that the respondents have engaged in unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action, designed to effectuate the policies of the Act.

"It has been found that each respondent has refused to bargain collectively with the Union as the representative of a majority of the employees in the appropriate unit, pertaining to said respondent. It will therefore be recommended that the respondents bargain collectively with the Union."

(Page 5, lines 49 to 60.)

(7) To that portion of the "Conclusions of Law" appearing on page 6 of said Intermediate Report, reading as follows:

1. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization within the meaning of Section 2 (5) of the Act.

"2. The following employees of Hearst Pub-

lications, Incorporated (Los Angeles Examiner Department), at all times material herein, constituted, and now constitute, the unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: All newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week within Los Angeles, California, except temporary newsboys.

* * * * * * *

"4. Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., has been at all times material herein the exclusive representative of all employees in the aforesaid units for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

"5. By refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as exclusive representative of all their employees in the aforesaid appropriate units, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

"6. By interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8 (1) of the Act.

"7. The aforesaid unfair labor practices are

unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act."

(Page 6, lines 3 to 43.)

(8) To those portions of "Recommendations" appearing on pages 6, 7 and 8 of said Intermediate Report, reading as follows:

"1. Cease and desist from:

"(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive bargaining representative of all newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week, within Los Angeles, California, except temporary newsboys.

"(b) Engaging in any like or related acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

"2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

"(a) Upon request bargain collectively with the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive representative of all newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week, within Los Angeles, California, except temporary newsboys, in respect to rates of pay, wages, hours of employment and other conditions of employment;

"(b) Post notices immediately in conspicuous places in its plant and office at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a) and (b) of these recommendations and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations;

"(c) Notify the Regional Director for the Twenty-First Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith."

(Pages 6 and 7, line 53, page 6 to line 31, page 7.)

"It is further recommended that unless on or before twenty (20) days from the receipt of

this Intermediate Report the respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents to take the action aforesaid."

(Page 8, lines 15 to 19.)

Exceptions to Rulings at the Hearings in These Proceedings on December 16, 1941.

(9) To the ruling overruling objection of this respondent to consolidation order dated December 3, 1941 (Board's Ex. 1-B). This ruling appears in the Official Report of Proceedings, page 9, lines 2 and 3, the objection thus overruled appearing on page 7, line 22, to page 9, line 1.

(10) To the ruling overruling objection of this respondent to Board's Exs. Nos. 2-A-1, 2-A-2, 2-A-3, 2-A-4, 2-B, 2-C, 2-D, 2-E, 2-F and 2-G. This objection and ruling appear in the Official Report of Proceedings, page 17, lines 11 to 16.

(11) To the ruling overruling objection of this respondent to Board's Exs. 3, 3-A, 3-B, 3-C, 3-D, 3-E, 3-F, 3-G, 3-H and 3-I. This objection and ruling appear in the Official Report of Proceedings, beginning at line 15 on page 21 and ending on page 22, line 9.

(12) To the ruling overruling objection of this respondent to Board's Ex. 5. This objection and ruling appear in the Official Report of Proceedings between page 23, line 7 and page 24, line 22.

(13) To the ruling denying this respondent's motion to strike a question propounded to the witness Comorre and his answer thereto. This question and answer, the motion to strike and the ruling thereon appear in the Official Report of Proceedings between page 30, line 25, and page 32, line 2.

(14) To the ruling refusing to admit in evidence Los Angeles Examiner's Exs. 1 and 2 for identification. The offer of such exhibits and the objections thereto, and the rulings upon such objections, appear in the Official Report of Proceedings between page 35, line 22, and page 39, line 24.

(15) To the denial of this respondent's Motion to Dismiss Complaint (Board's Ex. 1-C). It is stated in the Intermediate Report, page 2, line 35, that this Motion was denied by the Trial Examiner.

Exceptions to Rulings in the Case Instituted for Investigation and Certification of Representatives Pursuant to Section 9 (c) of the National Labor Relations Act, Being Case No. R-1926 (XXI-R-1084).

(16) To the denial by the Board of this respondent's Motion to Dismiss Petition, for Investigation and Certification of Representatives Pursuant to Section 9 (c) of the National Labor Relations Act (Examiner's Ex. 2 in said case No. R-1926). The Board's ruling appears in its Decision and Direction of Elections, dated January 9, 1941 (Board's Ex. 3-A).

(17) To Finding II, entitled "The organization involved" of the Board, appearing on page 6 of the said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership all persons in the metropolitan area of Los Angeles employed in the general distribution and sale of newspapers, magazines, and periodicals, except those who have the power to hire and discharge."

(18) To those portions of Finding III, entitled "Status of the newsboys involved in this proceeding," commencing at page 7 of said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

> "Circulation manager of the respective Companies control the general execution of their policies relating to newspaper distribution. The metropolitan area of Los Angeles, the territory in which the newspapers are generally distributed, is divided for administrative purposes into specific geographichl districts, and district managers assigned by the circulation manager to assist in the circulation and distribution of the newspaper in these districts control the execution of the Companies' policy with respect to newspaper circulation and distribution within such districts.
>
> * * * * * * *

"* * * The newspapers are delivered to newsboys, who sell them to the public, or are delivered to so-called checkmen stationed at important corners or spots who redistribute the newspapers to newsboys stationed at neighboring corners or spots of lesser importance. For his services in redistributing newspapers the checkman receives a small salary from the publisher. He is carried on the publisher's pay roll. At least to the extent of such services, he is admittedly an employee of the publisher. In addition to such wholesaling activities, the checkman sells newspapers to the public and, in all other respects, he occupies a position similar to that of the ordinary newsboy.

* * * * * * *

"* * * Likewise the district manager enters a charge, which is set by the publisher, against the newsboy or the checkman, as the case may be, for each newspaper delivered * * * and the checkman charges the newsboy an amount equal to the sum charged the checkman by the district manager. At the end of the selling period, the newsboys settle with the district manager or the checkman, as the case may be, the checkmen settle with the district manager, and the district manager accounts to his superior for the newspapers.

* * * * * * *

"* * * it is undenied that the district managers unilaterally determine the number of

'extra' papers, in excess of the established order, which the newsboys must attempt to sell. Moreover, in practice, the newsboys cannot determine the size of their established order without the cooperation of the district manager. (Pages 6, 7 and 8.)

* * * * * * * *

"Celestino Sanchez, Grover C. Nixon, and Harry L. Buhl, Examiner newsboys, gave similar testimony with reference to the distribution of the Examiner establishing that the district managers determine the number of papers delivered to those newsboys.

* * * * * * *

"The newsboy customarily obtains his corner or spot by making application at the plant of the publisher where he consults a district manager. The applicant usually inquires whether there is a corner or spot 'open.' If an opening exists, the district manager escorts the newsboy to the corner or spot and furnishes him with newspapers or directs him to a checkman who shows the newsboy his territory and furnishes him with newspapers.

* * * * * * *

"Not only do the district managers of the Companies allocate corners and spots, they also issue detailed directions as to specific places within the newsboy's allotted territory in which to engage in selling activities, particularly with

reference to standing in street traffic and covering business establishments where large numbers of people congregate.

(Page 10.)

* * * * * * *

"* * * When Ernie Latham first began selling the Examiner, William Jackson, Examiner district manager, took Latham to his corner, told him to 'watch' the corner, to 'work' the market located nearby, and to 'work the white traffic lines' in the street. On another occasion, Jackson told Latham, who then operated as a checkman, to instruct an off-spot boy to whom he supplied papers 'to work in the safety zone.'

* * * * * * *

"* * * To facilitate the work of the newsboy and to increase circulation, according to the testimony of several newsboys, the district managers distribute such equipment and advertising matter to the newsboys with instructions to keep the newspapers in the boxes or the racks and to display the advertising matter on posts, fire plugs, or other vantage points.

"Generally the newsboy is required to be at his post from the time the newspapers customarily appear on the street to the time settlement is made. Instances are found in the record where the district manager definitely fixed the newsboy's hours.

(Page 11.)

* * * * * * *

"The record is replete with instances in which district managers have removed, permanently or temporarily, newsboys from their corners or transferred them from one location to another, for various reasons.

* * * * * * *

"* * * In September 1939, Nick Volanty removed Charles Seklemian from his spot and later reinstated him. According to the latter's testimony, Seklemian was told by Volanty that he had received a telephone call at the office of the Examiner from an operator of a beer garden in Seklemian's territory who stated that he would bar Seklemian from the beer garden since he wore a Bridges or C.I.O. button. Seklemian further testified that he was chided by Volanty for not concealing such buttons, that Volanty stated that Seklemian's sales had been declining, and that Volanty informed Seklemian that 'the office was sending out another hustler' as a substitute at a cost of $4.50 for the night.' As a result, the next night Seklemian did not sell papers. The following night, however, he persuaded Volanty to change his mind and obtained reinstatement. In his testimony Volanty denied generally that he ever paid a newsboy any amount to substitute for Seklemian; otherwise, he failed to testify about the button incident or Seklemian's removal. We find that Seklemian was removed from his corner and subsequently reinstated under cir-

cumstances substantially as related above by him.

"The record also contains evidence with respect to the extent of the Companies' supervision over the conduct of the newsboys while they are engaged in selling newspapers on the street * * * the diligence of the newsboys is closely observed by the circulation department. * * * The supervisor or the investigator transmits the complaints to the district manager who brings the matter to the attention of the offending newsboy with the view of remedying the situation in the future. * * * On one occasion when William Jackson, Examiner district manager, found Ernie Latham, an Examiner newsboy, sitting on a fire plug and holding one remaining copy of an early edition of the Examiner, Jackson inquired why Latham was not working, stated that 'the office would be on him if they caught Latham sitting down,' and told Latham '* * * to get out there and sell those papers.' On another occasion, Jackson arrived at Latham's location while he was eating his lunch in the corner drug store. When Latham's object in visiting the drug store was learned by Jackson, he told Latham to 'get a sandwich and stay outside on the corner.'

(Pages 12 and 13.)

* * * * * * *

"* * * Likewise, Abie Peters, Examiner dis-

trict manager, instructed Ernie Latham not to handle the Times * * *

(Page 14.)

* * * * * * *

"On the basis of the foregoing, we are of the opinion that the Companies have the right to exercise, and do exercise, such control and direction over the manner and means in which the newsboys perform their selling activities as establishes the relationship of employer and employee for the purposes of the Act. Through the district managers, who are authorized to act as publishers' representatives in the circulation and distribution of their newspapers, the Companies hire the newsboys by the allotment of corners and spots, thus providing them with a place to work, furnish company-owned equipment and paraphernalia to facilitate newspaper sales, and require the newsboys' attendance at their posts and attention to their work, within customary limits, during relatively definite hours. Moreover, the Companies control the number of papers delivered to the newsboys for the purpose of sale, limit their earnings by the establishment of a fixed 'wholesale' and retail price for the newspapers, afford them a return privilege for unsold papers with the exceptions hereinabove noted, and supervise the newsboys' selling activities as to such details of performance as the manner of calling, hold-

ing, and displaying the newspaper, and place of its sale within the allotted territory. Furthermore, the Companies at will discharge the newsboys, transfer them to other locations, and lay them off as disciplinary measures. The newsboy is not free to sell where he will; he must operate in a certain area under company-imposed conditions; if he does not succeed in selling, he will be dismissed. Since the relationship contemplates services of an indefinite duration terminable at the will of either party, the newsboy has no vested interest in the newspaper business. Although he is not carried on the Companies' pay rolls, the newsboy is an integral part of the Companies' distribution system and circulation organization.

* * * * * * *

"* * * The method by which the newsboys are compensated for their services is a convenient accounting device employed by the Companies to measure the earnings of the newsboys and to provide an incentive for increased newspaper circulation.

(Page 15.)

* * * * * * *

"* * * We * * * hold upon this record that the newsboys here involved are within the definition of employees as the term is used in this Act. Accordingly, we find that the newsboys involved in this proceeding are employees with-

in the meaning of Section 2 (3) of the Act." (Page 16.)

(19) To that portion of Finding IV entitled "The question concerning representation," appearing on page 16 of said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

> "* * * We find that questions have arisen concerning the representation of employees of the Companies."

(20) To that portion of Finding V entitled "The effect of the questions concerning representation upon commerce," appearing on page 16 of said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

> "We find that the questions concerning representation which have arisen, occurring in connection with the operations of the Companies described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(21) To that portion of Finding VI entitled "The appropriate units" appearing on pages 17 and 18 of said Decision and Direction of Elections, dated January 9, 1941, and reading as follows:

> "* * * All newsboys engaged in the selling of newspapers in the metropolitan area of Los

Angeles are eligible to membership in the Union.

* * * * * * *

* * * Since those whom the Union desires to be included in the unit are, in general, mature individuals who daily rely upon their earnings from the street vending of newspapers as their source of support, since the Union is the only labor organization existing among the newsboys, and because union organization has not at present extended to suburban newsboys other than the Times newsboys in Glendale, California, we find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining: * * * (d) all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys. We further find that said units will insure to employees of the Companies the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act."

(Pages 17 and 18.)

(22) To that portion of Finding VII entitled "The determination of representatives" appearing on page 19 of said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

* * * we find that the questions of repre-

sentation which have arisen can best be resolved in elections by secret ballot * * *"

(23) To the "Conclusion of Law" appearing on page 19 of said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

"1. Questions affecting commerce have arisen concerning the representation of employees of the Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

"2. The following employees of * * * Hearst Publications, Incorporated (Los Angeles Examiner Department), * * * constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: * * * (d) all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys."

(24) To that portion of said Decision and Direction of Elections, dated January 9, 1941, entitled "Direction of Elections," appearing on pages 19 and 20 thereof, reading as follows:

"Directed that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining, elections by secret ballot shall be conducted as early as possible but not later than

thirty (30) days from the date of this Direction of Elections, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the employees of the Companies within the groups described below who were employed by any of the Companies on the date of this Direction of Elections, including employees who did not work on said date because they were ill or on vacation, and employees who were then or shall have since been temporarily laid off, and excluding employees who shall have since quit or been discharged for cause:

* * * * * * *

"(d) All newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys; to determine whether or not said employees desire to be represented by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., for the purposes of collective bargaining."

(25) To each and every part of the "Order Overruling 'Objections to Validity of Direction of Elections and Exceptions to the Same: Blanket Objection to the Ballot of Each and Every Person Participating in said Elections (Los Angeles Ex-

aminer Unit)'" dated May 26, 1941, in case No. R-1926.

(26) To each and every part of the Report on Objections in case No. R-1926, dated September 8, 1941.

(27) To those portions of the Supplemental Decision and Direction in case No. R-1926, dated September 26, 1941 (Board's Ex. 3-H) on pages 2 and 3 thereof, reading as follows:

> "* * * an election by secret ballot was conducted on May 15, 1941, under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California) among employees of the Los Angeles Examiner * * * *
>
> * * * * * * *
>
> "* * * * We have considered the Los Angeles Examiner's Objections and find that they raise no substantial or material issues with respect to the conduct of the ballot. We hereby overrule the said Objections in their entirety."

(28) To that portion of "Certification of Representatives" in Case No. R-1926, dated October 20, 1941 (Board's Ex. 3-I), appearing on pages 2 and 3 thereof, reading as follows:

> "* * * an election by secret ballot was conducted on May 15, 1941, under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California), among employees of Hearst Publica-

tions, Incorporated (Los Angeles Examiner Department), * * *

* * * * * * * * *

"It is Hereby Certified that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been designated and selected by a majority of all employees of Hearst Publications, Incorporated (Los Angeles Examiner Department), Los Angeles, California, who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9(a) of the Act, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment."

Grounds for the foregoing exceptions are more particularly stated in this respondent's Motion to Dismiss Complaint herein (Board's Ex. 1-C), and in a Brief of this respondent filed concurrently herewith, pursuant to Sec. 33 of Art. II of the Rules and Regulations of the Board, Series 2, as amended. Further, and without limiting the generality of the foregoing, this respondent states the following grounds for the foregoing exceptions:

I.

No evidence supports the finding of the Trial Examiner that the claimed bargaining unit was an appropriate unit.

II.

No evidence supports the finding of the Trial Examiner that the newsboys within the designated unit were employees of this respondent.

III.

No refusal of this respondent to bargain with the Union could affect commerce within the meaning of the National Labor Relations Act.

Dated at Los Angeles, California, January 28, 1942.

HEARST PUBLICATIONS, INCORPORATED, (LOS ANGELES EXAMINER DEPARTMENT)
By Its Attorneys:
LAWLER, FELIX & HALL,
JOHN M. HALL,
A. LAURENCE MITCHELL,
By JOHN M. HALL.

[Title of Board and Cause.]

Case No. C-2051
(XXI-C-1957)

EXCEPTIONS OF STOCKHOLDERS PUBLISHING COMPANY, INC., TO THE INTERMEDIATE REPORT AND OTHER PARTS OF THE RECORD AND PROCEEDINGS

Comes now Stockholders Publishing Company, Inc., Respondent herein, and files this, its Exceptions, to the Intermediate Report of the Trial Examiner, Honorable W. P. Webb, and to certain other parts of the record, proceedings and motions, and to findings, conclusions of law and rulings as hereinafter specified in Case No. XXI-R-929.

The Intermediate Report is dated January 7, 1942, and the above entitled and numbered case was transferred and continued before the Board pursuant to order of the Board dated January 10, 1942.

These Exceptions are filed pursuant to Article II, Section 33, of National Labor Relations Board Rules and Regulations, Series 2, as amended.

Respondent's Exceptions to said Intermediate Report dated January 7, 1942, as follows:

(1) To "Finding II. The organization involved," appearing on Page 4, Lines 1 to 5, of the Intermediate Report, reading as follows:

"Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization

"* * * the undersigned finds that: * * * * chartered by the Congress of Industrial Organizations admitting to membership employees of the Respondents."

(2) To that portion of Finding No. III entitled "The appropriate unit," appearing between Lines 18 and 30 on Page 4 of said Intermediate Report, reading as follows:

(2) all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys, constitute units appropriate for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment, and the undersigned further finds that the aforesaid employees at all times material herein constituted and now constitute units appropriate for the purposes of collective bargaining, and that such units will insure to employees of the respondents the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act."

(3) To that portion of the Finding No. III, Section 2, entitled "Representation by the Union of a majority in the appropriate units", appearing on Page 4, Line 50, and on Page 5, Lines 1 to 9, of said Intermediate Report, reading as follows:

"* * * the undersigned finds that on, and at

all times after, * * * July 30, 1941, in respect to the News, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate units, and that, pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times, and is now, the exclusive representative of all the employees in the aforesaid units for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment."

(4) To those portions of Finding No. III, Section 3, entitled "The refusal to bargain," appearing on Page 5, Lines 29 to 37, of the Intermediate Report, reading as follows:

"* * * the undersigned finds that the respondents' plea in justification is without merit.

The undersigned finds that the * * * respondent News on August 27, 1941, and at all times thereafter, have refused to bargain collectively with the Union as the exclusive representative of their employees in the appropriate units and have thereby interfered with, restrained and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act."

(5) To Finding No. IV entitled "The effect of the unfair labor practices upon commerce," appearing on Page 5, Lines 40 to 47, of said Intermediate Report, reading as follows:

"The activities of the respondents, set forth in Section 3 above, occurring in connection with the operations of the respondents described in Section 1 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(6) To Finding No. V entitled "The remedy", appearing on Page 5, Lines 50 to 60 of said Intermediate Report, reading as follows:

"Since it has been found that the respondents have engaged in unfair labor practices, it will be recommended that they cease and desist therefrom and take certain affirmative action, designed to effectuate the policies of the Act.

"It has been found that each respondent has refused to bargain collectively with the Union as the representative of a majority of the employees in the appropriate unit, pertaining to said respondent. It will therefore be recommended that the respondents bargain collectively with the Union."

(7) To that portion of the "Conclusions of Law" appearing on Page 6, Lines 15 to 43 of said Intermediate Report, reading as follows:

"* * * The following employees of Stockholders Publishing Company, Inc., at all times material herein, constituted, and now consti-

tute, the unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: All full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys.

4. Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been at all times material herein the exclusive representative of all employees in the aforesaid units for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as exclusive representative of all their employees in the aforesaid appropriate units, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

6. By interfering with, restraining and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act."

(8) To those portions of "Recommendations", appearing on Page 7, Lines 38 to 62 and on Page 8, Lines 1 to 20 inclusive, of said Intermediate Report, reading as follows:

"1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers; temporary, casual and part-time newsboys.

(b) Engaging in any like, or related, acts or conduct interfering with, restraining or coercing its employees in the exercise of the rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative

of all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys in respect to rates of pay, wages, hours of employment and other conditions of employment.

(b) Post notices immediately in conspicuous places in its plant and office at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a) and (b) of these recommendations and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of these recommendations.

(c) Notify the Regional Director for the Twenty-first Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report the respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondents to take the action aforesaid."

(9) To the Examiner's ruling on Respondent's objection to the order of consolidation, which objection will be found on Page 7, Lines 22 to 25 inclusive, and Page 8, Lines 1 to 22 inclusive of the Official Report of Proceedings, and which ruling will be found on Page 9, Lines 2 and 3 of said Official Report of Proceedings.

(10) To the statement of the Examiner appearing in the Intermediate Report on Page 2, Line 36, reading as follows:

> (Referring to respondents' motions to dismiss—being as to respondent Stockholders Publishing Company, Inc.—Board's Exhibit 2-e)
>
> "The undersigned denied said motions."

Exception is taken to such statement for the reason that it does not appear from the record that any ruling was made by the Trial Examiner with respect to such motion or motions, and if the statement quoted above is held to be a ruling upon such motion or motions, exception is taken thereto.

By reason of the fact that the Examiner in said Intermediate Report relies upon and frequently makes reference to the Board's decision and Direction of Elections, dated January 9, 1941, and Decisions supplemental thereto (See Intermediate Report, Line 13, et seq. Page 4, Line 39, et seq. Page 4, Line 24, et seq. Page 5, Intermediate Report) Respondent at this time excepts to certain rulings in said case instituted for investigation and certifi-

cation of representatives, being Case No. R-1923 as follows:

(1) To Finding II, entitled "The organization involved" of the Board, appearing on page 6 of the said Decision and Direction of Elections, dated January 9, 1941, reading as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership all persons in the metropolitan area of Los Angeles employed in the general distribution and sale of newspapers, magazines, and periodicals, except those who have the power to hire and discharge."

(2) To that portion of Finding III, entitled "Status of the newsboys involved in this proceeding", appearing on page 16 of said Decision, reading as follows:

> "Accordingly, we find that the newsboys involved in this proceeding are employees within the meaning of Section 2 (3) of the Act."

(3) To that portion of Finding IV, entitled "The question concerning representation," appearing on page 16 of said Decision, reading as follows:

> "We find that questions have arisen concerning the representation of employees of the Companies."

(4) To Finding V, entitled "The effect of the questions concerning representation upon com-

merce", appearing on page 16 of said Decision, reading as follows:

> "We find that the questions concerning representation which have arisen, occurring in connection with the operations of the Companies described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(5) To that portion of Finding VI, entitled "The appropriate units", appearing on pages 17 and 18 of said Decision and Direction of Elections, reading as follows:

> "* * * we find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining: (a) All full-time newsboys and checkmen who are engaged to sell The News within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys * * * We further find that said units will insure to employees of the Companies, the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.",

(6) To that portion of Finding VII, entitled "The determination of representatives", of the

Board, appearing on page 18 of said Decision, reading as follows:

> "At the hearing lists prepared by * * * The News were introduced in evidence purporting to show the following approximate current number of newsboys employed by each of these Companies:
>
> News ..... 110 ....."

(7) To the "Conclusions of Law", appearing on page 19 of said Decision and Direction of Elections, reading as follows:

> "1. Questions affecting commerce have arisen concerning the representation of employees of the Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.
>
> 2. The following employees * * * Stockholders Publishing Company, Inc. * * * of Los Angeles, California, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: * * * all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys: * * *"

(8) To that portion of the "Decision and Direction of Elections", appearing on pages 19 and 20 of said Decision, reading as follows:

> "* * * Directed that, as part of the investigation authorized by the Board to ascertain

representatives for the purposes of collective bargaining, elections by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction of Elections, under the direction and supervision of the Regional Director for the Twenty-first Region, acting in this matter as agent for the National Labor Relations Board and subject to Article III, Section 9, of said Rules and Regulations, among the employees of the Companies within the groups described below who were employed by any of the Companies on the date of this Direction of Elections, including employees who did not work on said date because they were ill or on vacations, and employees who were then or shall have since been temporarily laid off, and excluding employees who shall have since quit or been discharged for cause:

* * * * * * *

(a) All full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys:".

Dated at Los Angeles, California, this 4th day of February, 1942.

STOCKHOLDERS PUBLISHING COMPANY, INC.

By BINFORD & BINFORD,

Its Attorneys.

By L. B. BINFORD

By HOWARD M. BINFORD

[Title of Board and Causes.]

Case No. C-2050
Case No. C-2051

Room 442
Shoreham Building
Washington, D. C.

A hearing was held in the above matter for the purpose of Oral Argument at the above place February 19, 1942 at 4:15 p. m.

Before:
William M. Leiserson, Member.
Gerard Reilly, Member.

Appearances:
Eugene Thorrens, of Counsel to the Board.

For the Company: L. B. Binford, 1208 Hollingsworth Building, Los Angeles, Calif. Harvey J. Kelly, H. Bar H. Ranch, Harrison, Idaho. For the Union: None.

[Title of Board and Causes.]

Case No. C-2050
Case No. C-2051

Mr. James A. Cobey, for the Board. Lawler, Felix and Hall, by Mr. John M. Hall, of Los Angeles, Calif., and Mr. Harvey J. Kelley, of Harrison, Idaho, for the Examiner. Binford & Binford, by Mr. L. B. Binford, of Los Angeles, Calif., for the News. Mr. Pat Comorre, of Los Angeles, Calif.,

for the Union. Mr. Eugene R. Thorrens, of counsel to the Board.

DECISION
and
ORDER

STATEMENT OF THE CASE

Upon charges duly filed[1] by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., herein called the Union, the National Labor Relations Board, herein called the Board, by the Regional Director for the Twenty-first Region (Los Angeles, California), issued its complaints, dated December 5, 1941, against Hearst Publications, Incorporated (Los Angeles Examiner Department) and Stockholders Publishing Company, Inc., herein called the respondents, (sometimes called the Examiner and the News, respectively), alleging that the respondents had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.[2] Copies of the

[1]Charges against Hearst Publications, Incorporated (Los Angeles Examiner Department), and against Stockholders Publishing Company, Inc., were filed on November 21, 1941.

[2]By order entered on December 3, 1941, the Board, pursuant to Article II, Section 36(b), of its Rules and Regulations—Series 2, as amended, had consolidated the cases for the purposes of the pro-

complaints accompanied by notice of hearing were duly served upon the respondents and the Union.

Concerning the unfair labor practices, the complaints alleged in substance: (1) that on or about November 14, 1941, and thereafter, the Examiner and, on or about August 27, 1941, and thereafter, the News refused to bargain collectively with the Union as the exclusive representative of their employees within appropriate bargaining units, although the Union represented a majority of such employees and (2) that by such refusals the respondents interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

On December 15 and 16, 1941, respectively, the Examiner and the News filed answers admitting certain allegations of the complaints, but denying the commission of the alleged unfair labor practices and interposing certain defenses hereinafter set forth.

Pursuant to notice, a hearing was held in Los Angeles, California, on December 16, 1941, before Thomas S. Wilson, the Trial Examiner duly designated by the Chief Trial Examiner. The Board and

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ceeding. At the hearing herein the respondents objected to the consolidation order. The Trial Examiner overruled the objection. The ruling is hereby affirmed. In our present decision, as well as in the Board's decision in the representation proceeding hereinafter referred to, we have not considered evidence with respect to one publisher as applicable to any other publisher.

the respondents were represented by counsel, and the Union by its representative. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

On December 15, 1941, the Examiner had filed a written motion with the Regional Director to dismiss the complaint on the ground that the Board was without jurisdiction since the Examiner's operations did not affect interstate commerce and neither the members of the Union nor other persons alleged in the complaint as comprising the unit appropriate for the purposes of collective bargaining were employees of the Examiner. The Regional Director did not rule upon the motion. A similar motion was filed by the News at the outset of the hearing. The Trial Examiner denied the motions. During the course of the hearing, the Trial Examiner made several rulings on other motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Thereafter the Trial Examiner issued and duly served upon the parties his Intermediate Report, dated January 7, 1942, finding that the respondents had engaged in and were engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (5) and Section 2 (6) and (7) of the Act, and recommending that the respondents

cease and desist from their unfair labor practices and, upon request, bargain collectively with the Union. On February 2, 1942, the Examiner, and on February 6, 1942, the News filed exceptions to the Intermediate Report and briefs in support of the exceptions. Pursuant to notice duly served on all parties, a hearing for the purpose of oral argument was held before the Board in Washington, D. C., on February 19, 1942. The respondents were represented by counsel and participated in the argument. The Union did not appear.

The Board has considered the exceptions to the Intermediate Report and the briefs submitted by the parties, and insofar as they are inconsistent with the findings of fact, conclusions of law, and order set forth below, finds the exceptions to be without merit.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. The business of the respondents[3]

A. Hearst Publications, Incorporated (Los Angeles Examiner Department)

Hearst Publications, Incorporated, is a California corporation with its principal office and place

[3]The facts related in this section are taken from the Board's Decision and Direction of Elections dated January 9, 1941, in Matter of Stockholders Publishing Company and Los Angeles

of business in San Francisco, California. It is engaged in the publication of various daily and Sunday newspapers, including the Los Angeles Examiner.[4] The Examiner is a morning newspaper

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Newsboys Local Industrial Union No. 75, C. I. O., et al., 28 N. L. R. B., No. 151, a representation proceeding which, as hereinafter set forth, involved the respondents herein. In the present proceeding it was stipulated by all parties that the business of the respective respondents has continued without material change from that conducted by them at the time of the hearing in the afore-mentioned representation proceeding.

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[4]In addition to the Examiner, Hearst Publications, Incorporated, operates five other newspapers (Los Angeles Evening Herald and Express, San Francisco Examiner, San Francisco Call-Bulletin, Oakland Post-Enquirer, and Seattle Post-Intelligencer) and owns stock in the following subsidiaries: (1) American Weekly, Inc., a New York corporation which publishes "The American Weekly," a Sunday magazine and comic section which is a supplement and part of various Sunday newspapers published in cities throughout the United States; (2) Illinois Publishing and Printing Company, an Illinois corporation, which publishes the "Chicago Herald-American"; (3) Pitt Publishing Company, a Pennsylvania corporation, which publishes the "Pittsburgh Sun-Telegraph" and operates through its subsidiary WCAE, Incorporated, radio station FCAE; and (4) The Times Publishing Company, a Michigan corporation which publishes "Detroit Times." Hearst Publications, Incorporated is a wholly owned subsidiary of Hearst Consolidated Publications, Inc., a Delaware corporation, all of the common stock of which is owned by the Hearst Corporation, a Delaware corporation, a wholly owned subsidiary of American News-

published daily, including Sunday, at its plant in Los Angeles, California.[5] It has a daily[6] average circulation of approximately 213,460 copies and a Sunday circulation of approximately 566,175 copies. It is distributed throughout the State of California, principally in the metropolitan area of Los Angeles. Of the daily circulation, approximately 2 percent or 3,743 copies are sold and distributed outside the State of California. Of the Sunday edition, approximately 8 percent or 46,091 copies are sold and distributed outside the State of California.

The principal raw materials used in printing the Examiner include newsprint, mats, and ink. During the year 1939, all the newsprint, consisting of

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papers, Inc., a Delaware corporation. Clarence J. Shearn, as voting trustee, holds the legal title to all the common stock of American Newspapers, Inc., for the benefit of William Randolph Hearst. Hearst Consolidated Publications, Inc., The Hearst Corporation, and American Newspapers, Inc., have various subsidiaries engaged in the publishing and other businesses in various parts of the United States. Cf. Matter of William Randolph Hearst, Hearst Publications, Inc., Hearst Consolidated Publications, Inc., Hearst Corporation, American Newspapers, Inc., and King Features Syndicate, Inc., and American Newspaper Guild, Seattle Chapter, 2 N. L. R. B. 530, enf'd as mod., National Labor Relations Board v. Hearst, 102 F. (2d) 658 (C. C. A. 9).

[5]This plant is devoted exclusively to the publication of the Examiner and is operated independently of other Hearst papers.

[6]Exclusive of Sunday.

31,470 tons, was obtained from the States of Washington and Oregon and the Dominion of Canada. During the same period, all the mats, numbering 51,100, were obtained from the State of New York. The ink used, amounting to 1,065,581 pounds, was manufactured in the State of California.

The Examiner uses International News Service, Associated Press, and Dow-Jones Financial Service wire reports. It uses daily approximately 88,750 words obtained from these services. The Examiner supplies at least 1 wire service engaged in the interstate transmission of news with local news which the Examiner has collected. In 1939 the Examiner received and published approximately 58 feature services, the material for many of which was prepared and originated in States other than the State of California.

During the year 1939 an average of 32 percent of the space in the daily and 48 percent of the Sunday issues of the Examiner was devoted to advertising. Of this advertising space, 89.67 percent contained advertising originating in the State of California while the remainder, 10.33 percent, contained advertising originating outside the State of California.

B. Stockholders Publishing Company, Inc.

Stockholders Publishing Company, Inc., a Nevada corporation having its principal place of business in Los Angeles, California, is engaged in the publication, distribution, and sale of a daily (except

Sunday) newspaper, "The News."[7] The principal raw materials used in the printing of the News consist of newsprint, mats, ink, and photographic supplies. During the year 1939, all the newsprint, costing approximately $470,000, and all the mats, costing approximately $4,800, were obtained outside the State of California. During the same period, all the ink, costing approximately $16,000, and most of the photographic supplies, costing approximately $3,600, were purchased within the State of California. The daily average circulation of the News for March 1940 was 195,725 copies, 534 of which were circulated and distributed outside the State of California.

The News uses the wire reports of United Press which furnishes news sent from outside the State of California. It uses daily approximately 27,000 words obtained from this wire service. In 1939 the News published 13 feature services which it received from service houses located outside the State of California.

During 1939, 9,909,000 lines of space was devoted to local, national, and classified advertising. Of this advertising space, 1,500,000 lines were devoted to national advertising.

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[7]About April 1, 1940, the News combined "The Daily News," the morning edition, and "The Evening News," and thus established a 24-hour publication under a single name, "The News."

II. The organization involved

Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization chartered by the Congress of Industrial Organizations, admitting to membership employees of the respondents.

III. The unfair labor practices

A. The refusal to bargain collectively

1. The appropriate units

The complaints allege that the following units are appropriate for the purposes of collective bargaining: (a) all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys, and (b) all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys. The respondents contend that such units are inappropriate because newsboys having interests similar to those sought to be included in the units are excluded. We considered that contention in the Board's Decision and Direction of Elections, dated January 9, 1941, and found it to be without merit.[8] The respondents

[8]Matter of Stockholders Publishing Company, Inc., et al., and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., 28 N. L. R. B., No. 151.

introduced no new evidence bearing upon the appropriate units in the present proceeding. We have reconsidered the contention of the respondents and find no merit in it.

We find, as did the Trial Examiner, that (a) all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys, and (b) all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys, constitute units appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment. We further find that the aforesaid employees at all times material herein constituted and now constitute units appropriate for the purposes of collective bargaining and that such units insure to employees of the respective respondents the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

2. Representation by the Union of a majority in the appropriate units

Pursuant to the Board's Decision and Direction of Elections, dated January 9, 1941,[9] separate elections by secret ballot were conducted under the direction and supervision of the Regional Director

[9] 28 N. L. R. B., No. 151.

for the Twenty-first Region (Los Angeles, California) on May 14, 1941, among newsboys of the News, and on May 15, 1941, among newsboys of the Examiner. As a result of the elections, the Board issued its Supplemental Decision and Certification of Representatives, dated July 30, 1941,[10] and its Certification of Representatives, dated October 20, 1941,[11] certifying that the Union had been designated and selected by a majority of all employees within the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act, the Union was the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment. No evidence was introduced in the present proceeding to rebut the presumption arising from the certifications that the Union is still such representative.

We find, as did the Trial Examiner, that on and at all times after July 30, 1941, with respect to the News, and at all times after October 20, 1941, with respect to the Examiner, the Union was the duly designated bargaining representative of a majority of the employees in each of the aforesaid appropriate units, and that pursuant to the provisions of Section 9 (a) of the Act, the Union was at all such times and is now the exclusive representative

[10] 33 N. L. R. B., No. 168.

[11] 36 N. L. R. B., No. 51.

of all employees in each of the aforesaid units for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. The refusal to bargain

The complaints allege, and the respondents admit in their respective answers, that on or about August 27, 1941, and thereafter, with respect to the News, and on or about November 14, 1941, and thereafter, with respect to the Examiner, the respondents refused to bargain collectively with the Union. The answers, however, assert that such refusals to bargain were based upon advice of counsel and in the bona fide belief that the Board had no jurisdiction over the respondents with respect to their relationship with the newsboys since they were independent contractors and not employees. The respondents denied in their answers that they were engaged in commerce within the meaning of the Act.

In its Decision and Direction of Elections dated January 9, 1941,[12] based upon the record of the representation hearing held at Los Angeles, California, from June 10 to 27, 1940, the Board held that the respondents were engaged in commerce within the meaning of Section 2 (6) and (7) of the Act, and that the newsboys of the respondents within the aforesaid appropriate units were employees within

[12] 28 N. L. R. B., No. 151.

the meaning of Section 2 (3) of the Act.[13] The respondents did not call any witnesses or introduce any other relevant documentary evidence at the present hearing.[14]

The News urges, however, that the evidence introduced in the representation proceeding with respect to the News fails to support the Board's findings of fact underlying its ultimate conclusion with respect to the status of the newsboys vending the News. Particularly, the News asserts, contrary to our findings, that district managers handling its publication are not carried on its pay roll and that they are not employees of the News. While not all the findings in the Board's Decision, dated January 9, 1941, with respect to the relation between the publisher, district manager, and newsboy are applicable to the News, the record supports our previous determination that the district managers handling the News, like district managers of the

[13] During the hearing on the complaints, the Examiner and the News stipulated that "if all witnesses called by the Union, the Board, and respondent at the hearing at Los Angeles, California, from June 10, 1940, to June 27, 1940, were called to testify in this proceeding at this time, their testimony would be substantially the same as the testimony given at said hearing on June 10, 1940, to June 27, 1940; . . ."

[14] The Examiner offered in evidence, and the Trial Examiner rejected, transcripts of testimony and findings of the Industrial Accident Commission of the State of California in a workmen's compensation case wherein the Examiner was found not to be the employer of a newsboy. We hereby affirm the Trial Examiner's ruling.

other publishers involved in the representation proceeding, are employees of the News and that through the district managers the News directs and controls the newsboys with respect to the circulation and distribution of that publication.

District managers of the News receive for their services a guaranteed minimum plus commissions and, to that extent, are on the News' pay roll. If the earnings of a district manager are less than the guaranteed minimum, the News pays him an amount sufficient to yield the district manager the minimum guarantee. In the event the district manager's income exceeds the minimum guarantee, he retains the excess. The News argues that, because its district managers fix the amount which they charge newsboys for copies of the News, they are independent contractors making whatever profit they can from the resale of papers. We rejected this contention in the prior representation proceeding. The minimum sum guaranteed by the News to its district managers is no more than a fixed salary bearing another label. The so-called profit above the minimum guarantee is merely a variant of the bonus or commission system typical of nearly all mercantile business.[15] We are of the

[15]We have frequently held solicitors and salesmen paid on a commission basis to be employees of the firms they represent. See, for example, Matter of Washington Branch of the Sun Life Insurance Company of American and Industrial and Ordinary Insurance Agents Union No. 21354, Industrial and Ordinary Insurance Agents Council, 15 N. L. R. B., 817, 821.

opinion that the method used by the News for payment of its district managers supports our previous finding that they are employees of the News and that their control over checkmen and newsboys, hereinafter described, is exercised on behalf of the News.

Furthermore, the News allocates a geographical area, varying in size, to each district manager and each district manager is authorized to distribute the News within the assigned territory.[16] Each district manager obtains newspapers for the purposes of distribution at the News' office, or the News transports the newspapers to the district manager at a designated point within his territory. The district manager travels throughout his district, and delivers the newspapers to newsboys who sell them to the public, or to so-called checkmen stationed at important corners or spots who redistribute the newspapers to newsboys stationed at neighboring corners and spots of lesser importance. The checkmen are unquestionably employees of the News for the purpose of redistributing the newspapers and

[16] Dutton F. O'Brien, circulation manager of the News, testified that district managers either come to the office for their papers or the various editions of the News are sent to the district managers in "their territories." In their testimony, News district managers referred to "my district."

The title "district manager" implies that each manager has a fixed district. Furthermore, the fact that the newsboys have fixed locations indicate that the district managers have definite districts allocated to them by the News.

the district managers have supervision over them in the performance of their duties.[17]

The newsboy vending the News customarily obtains his corner or spot by making application for "a job" to the News district manager who assigns an opening to the applicant. In addition to allocating corners and spots, News district managers also issue detailed instructions as to the specific places within the newsboy's allotted territory where he is to engage in selling activities, particularly with reference to standing in street traffic and covering business establishments where large numbers of people congregate. News district managers, in at least some instances, unilaterally determine the number of papers allocated to newsboys for sale.[18]

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[17]For his services in redistributing newspapers the checkman receives a small salary from the News. The checkman is carried on the News' pay roll and, at least to the extent of such services, he is admittedly an employee of the News. In addition to such redistributing activity, the checkman sells newspapers to the public and, in all other respects, he occupies a position similar to that of the ordinary newsboy.

[18]In finding in the representation proceeding that district managers of the publishers fix the number of papers that the newsboy must attempt to sell, the Board relied, in part, upon the testimony of Arthur Steuart, a newsboy. At the oral argument before the Board in the instant proceeding, counsel for the News asserted that Steuart's testimony referred only to control exercised by Herald district managers. The record shows, however, that Steuart also sold the News and that he testified that the News district manager, Willie Matz, "gives me . . . the number he figures I should have."

The price of the newspaper to the public is set by the News and is printed on the masthead. The newsboys and the district managers are permitted by the News to return unsold copies and receive credit for them. Newsboys vending the News retain for themselves as earnings the difference between the amount they pay the district manager for the newspaper and the sum they receive for it from the public. The News, however, furnishes paraphernalia, including racks, change aprons, and placards advertising special features contained in the newspaper, bearing the name of the publisher. To facilitate the work of the newsboy and to increase circulation, News district managers distribute such equipment and advertising matter to the newsboys with instructions to keep the newspapers in the racks and to display the advertising matter on posts, fire plugs, or other vantage points. Generally the newsboy vending the News is required to be at his post from the time the newspapers customarily appear on the street to the time settlement is made, and in some instances the News district manager definitely fixes the newsboy's hours. Pursuant to specific instructions of the News, its district managers instruct newsboys vending the News as to the manner of holding the paper while engaged in street selling. In their discretion News district managers transfer newsboys who sell the News from one location to another for various reasons and discipline them for neglect of their selling activities.

In support of their contention that the newsboys are not employees both respondents rely upon our decision in Matter of Houston Chronicle Publishing Company and Houston Newsboys Union, Local 456.[19] That case does not govern in the present proceeding. In the Houston Chronicle case we held that the newsboys involved in that proceeding were not employees within the meaning of the Act since the record in that case disclosed that the publisher exercised no supervision or control over activities of the newsboys with respect to the manner and methods used in news vending. In the Houston Chronicle case, unlike the situation in the instant proceeding, it appeared that, among other things, any person could secure newspapers at wholesale from the publisher to sell on the streets; the newsboys themselves were alone responsible for the location they selected to sell newspapers; the publisher in no way regulated the number of papers issued to the newsboys; and, the newsboys were free from company restriction with respect to the manner and methods used on the street in news vending.

We have reexamined the evidence introduced at the representation hearing. Since we see no reason to depart from our prior determination, we hold that the newsboys involved in this proceeding are employees within the meaning of Section 2 (3) of the Act.

We find, as did the Trial Examiner, that the respondent News on August 27, 1941, and at all times

[19] 28 N. L. R. B., No. 155.

thereafter, and that the respondent Examiner on November 14, 1941, and at all times thereafter, has each refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The activities of each of the respondents, set forth in Section III above, occurring in connection with the operations of each of the respondents described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Since we have found that the respondents have engaged in unfair labor practices, we will order that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We have found that the respondents have refused to bargain collectively with the Union as the representative of a majority of the employees in appropriate units. We will therefore order that the respondents, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the cases, the Board makes the following:

Conclusions of Law

1. Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization, within the meaning of Section 2 (5) of the Act.

2. The following employees of Hearst Publications, Incorporated (Los Angeles Examiner Department) of Los Angeles, California, at all times material herein, constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys.

3. The following employees of Stockholders Publishing Company, Inc., of Los Angeles, California, at all times material herein, constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys.

4. Los Angeles Newsboys Local Industrial No. 75, C. I. O., has been at all times material herein

and still is the exclusive representative of all employees in each of the aforesaid units for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

5. By refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of all its employees in an appropriate unit, each of the respondents has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

6. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, each of the respondents has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Hearst Publications, Incorporated (Los Angeles Examiner Department), and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of its employees who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys:

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of its employees who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys:

(b) Post notices immediately in conspicuous

places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Stockholders Publishing Company, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of its employees who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys:

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organizations, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranted in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of its employees who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 30 day of March 1942.

HARRY A. MILLIS,
Chairman
WM. M. LEISERSON,
Member
GERARD D. REILLY
Member
[Seal] NATIONAL LABOR RELATIONS BOARD

HERALD EXHIBIT NO. 9

[Title of Board and Cause.]

Case No. XXI-R-928
Consolidated with
Case No. XXI-R-927,
Case No. XXI-R-1062
and
Case No. XXI-R-1084

STIPULATION

It is hereby stipulated and agreed, by and between the undersigned as counsel for the National Labor Relations Board, Twenty-first Region, and

counsel for Los Angeles Evening Herald and Express Department, a separate business enterprise which is wholly owned and operated by Hearst Publications, Incorporated, respectively, that if William J. Harrison, a witness who was called and sworn in this case, should be recalled, he would testify under oath as follows:

That as shown by the Agreed Statement of Facts filed in these proceedings, and being Board's Exhibit 2, as amended by Board's Exhibit 2-A, that for the year 1939 the Los Angeles Evening Herald and Express had a daily average net paid circulation of 243,022, of which 903 copies were sold or distributed outside the state of California, or in other words, that on the average 37/100 of 1% of the circulation of said newspaper is sold and distributed outside the state of California, while 99 and 63 100% of the circulation of said newspaper is sold and distributed wholly within the State of California, and that full time newsboys and check men, as defined in this proceeding, do not buy or sell or in any manner handle any of the 903 copies of the Los Angeles Evening Herald and Express sold and distributed outside the State of California, and that any change in the volume of the sales of such newsboys, as they have been defined in these proceedings, would not increase or decrease the volume of the sales of the newspaper outside of the state of California, and would not in any way, directly or indirectly, affect the sale of such newspaper outside the state of California.

Dated at Los Angeles, California, this 27th day of June, 1940.

FRANK A. MOURITSEN
Counsel for the Board
FLINT & MacKAY
By EDWARD L. COMPTON
Attorneys for Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated

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HERALD EXHIBIT NO. 5

BILL OF SALE

For and in consideration of the sum of One Hundred Fifty Dollars ($150.00), the receipt whereof is hereby acknowledged, the undersigned, Mae Williams, a widow, of Los Angeles, California, as the sole heir at law of Frank Maciewski, Deceased, does hereby sell, assign and transfer unto Henry Powers, a single man, all of the right, title and interest of said Frank Maciewski, and the undersigned, as the sole heir of said Frank Maciewski, Deceased, in and to the right to sell newspapers, magazines and periodicals, including morning, evening and night newspapers, on the Northwest corner of Fifth and Spring Streets in the City of Los Angeles. This assignment includes all contractual rights of the said Frank Maciewski to said location and all cus-

tomary rights which were acquired by said Frank Maciewski during his lifetime.

The undersigned does hereby warrant that she is the sole heir of said Frank Maciewski, deceased, and that the total value of the Estate of said Frank Maciewski, deceased, at the time of his death was less than $1000 in value.

Dated this 21st day of January, 1939.

(Signed) MAE WILLIAMS

614 W. 84th Street, Los Angeles.

State of California,
County of Los Angeles—ss.

On this .... day of January, 1939, before me, ..., a Notary Public in and for said County and State, personally appeared Mae Williams, known to me to be the person whose name is subscribed to the within Instrument, and acknowledged to me that she executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....

Notary Public in and for said County and State

Witnesses:
A. GORDON, 4201 Clayton Ave.
STANLEY KOPPEL, 1028 Overton.
GUS GEORGON, 730 S. Westlake.

HERALD EXHIBIT No. 2

[Letterhead of Downtown Business Men's Association]

December 21, 1934.

Mr. David Bell, Mgr. Street Circulation,
Herald-Express,
1243 Trenton,
Los Angeles, Calif.

Dear Mr. Bell:

Having received some complaints on your newsboy at the northeast corner of Fifth and Spring Streets, the Rowan Bldg. corner, we are requesting that you transfer this man to another section of the city.

The business men in that locality feel that this man is not the type to be selling your paper.

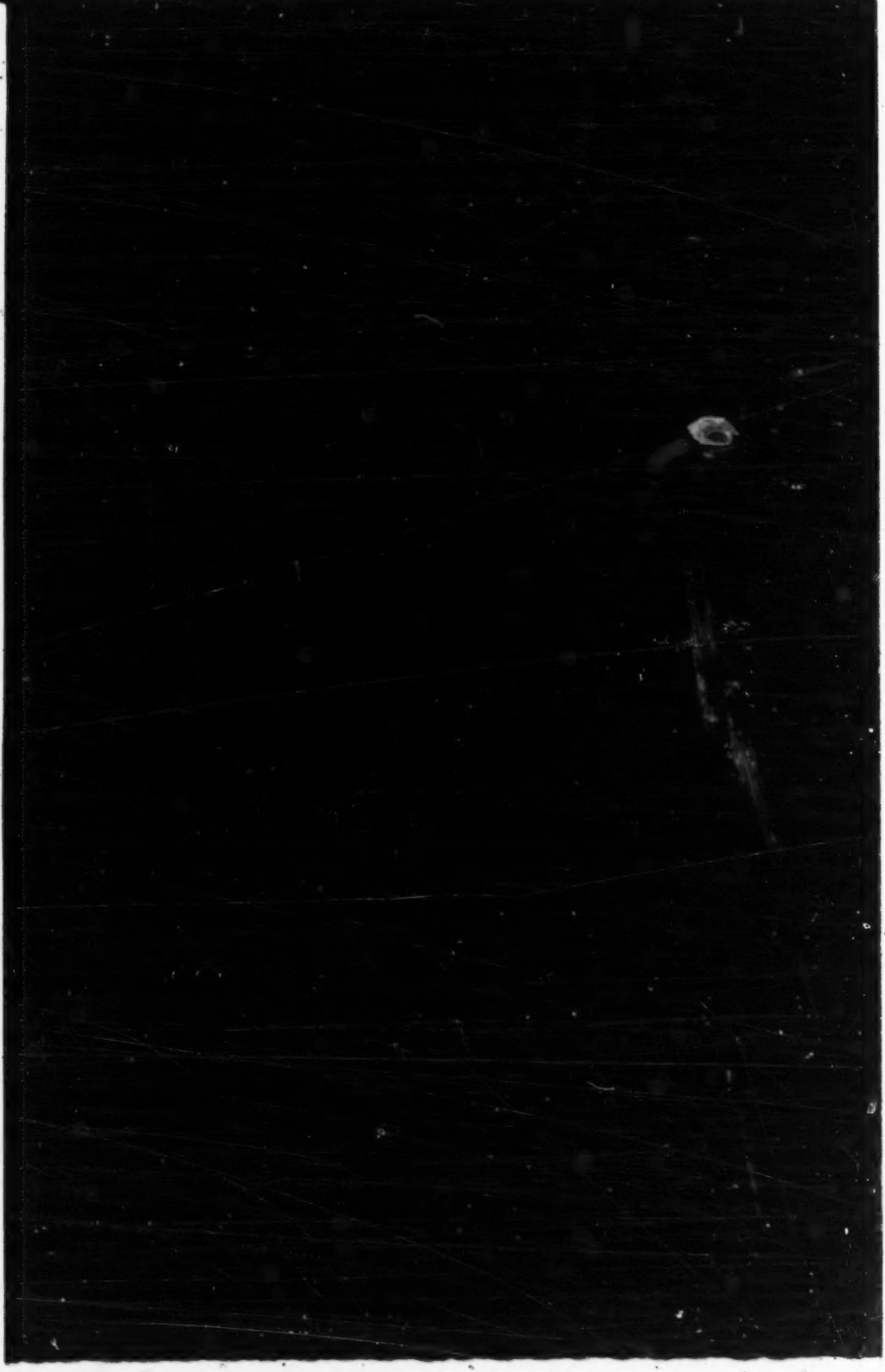
We feel that you will cooperate by making this suggested change immediately.

With best wishes for a Merry Christmas and a prosperous New Year, we are

Yours very truly,

DAIN STURGES,
Secretary.

DS:S



Nos. 10112, 10114, 10115, 10123

United States
Circuit Court of Appeals
For the Ninth Circuit.

No. 10112.
HEARST PUBLICATIONS, INCORPORATED,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10114.
STOCKHOLDERS PUBLISHING COMPANY, INC.,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10115.
HEARST PUBLICATIONS, INCORPORATED,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10123.
THE TIMES-MIRROR COMPANY, a corporation,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record
In Four Volumes
VOLUME II
Pages 485 to 979

Upon Petitions for Review and Enforcement of Orders of the National Labor Relations Board

ROTARY COLORPRINT, 590 FOLSOM ST., SAN FRANCISCO

HERALD EXHIBIT NO. 3

[Letterhead of Downtown Business Men's Association]

January 3, 1935.

David Bell, Street Circulation Mgr.,
Los Angeles Herald-Express,
Los Angeles, Calif.

Dear Mr. Bell:

I wish to confirm our telephonic conversation of Saturday morning, which is as follows:

"Harry Relis, your news-boy at the Rowan Bldg. corner at Fifth and Spring Streets, called upon me Friday, December 28th, and informed me that he had $100.00 invested in the right to sell the Herald Express on this corner, and asked for an opportunity to go back on this corner in order that he might recover his investment; and that on Saturday morning, the 29th, I communicated with Mr. J. F. Donlan of the R. A. Rowan Company by phone and explained the circumstances to him, and he agreed with me that the thing to do was to let Mr. Relis go back on the corner, in order that he might be given the opportunity of recovering his investment, which you agreed to do."

On January 2nd I received a letter from J. Allan Frankel, attorney, regarding this matter, and I understand you received a similar one. I immediately phoned Mr. Frankel and told him of my conversation with you on Saturday morning, and that it was not necessary for Mr. Relis to seek an attor-

ney, as the matter was already taken care of. He appreciated my interest in the matter, and stated that it was very decent of me to have called you up.

This thereby relieves this office of any responsibility in the removal of Harry Relis from the Rowan Bldg. corner at Fifth and Spring Streets.

Yours very truly,

DAIN STURGES,

Secretary.

DS:S

HERALD EXHIBIT 4

J. Allen Frankel
Attorney at Law

511 C. C. Chapman Building
Los Angeles
Trinity 5308

Dec. 31, 1934.

Los Angeles Evening Herald and Express,
1243 Trenton Street,
City

Gentlemen:

Harry Relis who sells magazines and newspapers at the northeast corner of Fifth and Spring Streets, this city, tells me that you discontinued selling him your newspapers at the written request of the Down Town Business Men's Ass'n., the latter named being instigated by the Rowan Building.

If these facts are correct, you may be guilty of a conspiracy to deprive my client of his livelihood, and I respectfully suggest that you immediately investigate the matter and make what restitution you deem advisable.

Awaiting your response,

Yours very truly,

J. ALLAN FRANKEL

HERALD EXHIBIT NO. 6

Jan. 21, 1939.

Dear Nick:

I haven't been down to see you because of being ill. I have sold the corner to Harry Powers, a friend of mine. So that you will know that this is my signature, I am identifying myself by repeating to you the story which you told me about that watch fob of Dad's. Remember? I am out at Glendale Sanitarium for another week, if you should want to reach me. Please turn over the corner to the buyer on Monday.

MAE WILLIAMS.

HERALD EXPRESS EXHIBIT NO. 7

[Title of Board and Cause.]

Case No. XXI-R-928
Consolidated with
Case No. XXI-R-927
and
Case No. XXI-R-1062

Rule 8.19 of the Rules under the California Unemployment Insurance Act (Chapter 352, Laws of 1935, as amended) as revised effectiye May 1, 1938, provides, in so far as material, as follows:

"Newsboys or Distributing Carriers, Newspaper Correspondents and Casual Contributing Writers. Newsboys or distributing carriers of newspapers are deemed independent contractors, and as such not liable as employees under this act for payment of contributions upon their earnings." * * *

"The term 'newspaper' as herein contained is construed to mean and have reference to a publication admitted by the United States Post Office as second class mail matter; and which conforms in all respects to the requirements of the provisions of section 520 of the Postal Laws and Regulations of the United States of America, edition of 1932, in effect October 1st, 1932, the provisions of which section 520 are by reference hereby incorporated herein and made a part hereof, and which publication further conforms in all respects to the provisions

of section 4460 of the Political Code of the State of California, defining a newspaper of general circulation, the provisions of which latter are by reference hereby incorporated herein and made a part hereof."

HERALD EXPRESS EXHIBIT NO. 8

[Title of Board and Cause.]

Case No. XXI-R-928
Consolidated with
Case No. XXI-R-927
and
Case No. XXI-R-1062

Social Security Tax Unit Ruling No. 64 (CD 1937-1 370,) provides in part as follows:

"A newsboy purchases newspapers from a publisher and sells them in such manner and at such time and place as he chooses. It is stated that the publisher does not control, and has no right to control, the activities of the newsboy in making his sales. The newsboy retains as his profit the difference between the purchase price and the selling price of the newspapers. The relationship of employer and employee does not exist as to such services. It follows that no liability for the taxes imposed by Titles VIII and IX of the Social Security Act is incurred with respect to the services performed by a newsboy under the circumstances stated."

HERALD EXHIBIT No. 1

[Title of Board and Cause.]

Case No. XXI R 928
Consolidated with
Case No. XXI R 927
and
Case No. XXI R 1062

ANSWER TO AMENDED PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9(c) OF THE NATIONAL LABOR RELATIONS ACT

Comes now the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated, a corporation, reserving its rights under its motion to dismiss filed concurrently herewith, and appearing for itself alone, files this its answer to Amended Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the National Labor Relations Act, and admits, denies and alleges as follows:

(1) Denies that the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated, a corporation, is the employer of the persons, or any of them, designated in said petition as members of a unit described as "Newsboys who sell papers at main spots and checkmen within the city limits of Los Angeles, California."

(2) Denies that the so-called bargaining unit described in said petition is an appropriate unit.

(3) Denies that any of the persons alleged to

comprise said unit is an employee of the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated.

(4) Denies that the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated has 280, or any employees in said unit.

(5) Denies that the "number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining" is 210, or any other number or percentage.

(6) Denies that any question has arisen concerning the representation of any employees of the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated in the alleged bargaining unit described in said petition; denies that the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated has refused to bargain with its employees; denies that the petitioner is the representative of the employees of the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated, or any of them, and in this connection alleges that any and all members of the petitioner or of the bargaining unit described in said petition who sell the newspaper published by the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated is and are independent contractors or merchandisers.

(7) Denies that the so-called question concerning representation, whether as described in said

petition or otherwise, is a question affecting commerce within the meaning of the National Labor Relations Act.

Wherefore, the Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated prays that the "Amended Petition for Investigation And Certification Of Representatives Pursuant to Section 9(c) of The National Labor Relations Act", heretofore filed herein, be dismissed.

FLINT & MAC KAY
By EDWARD L. COMPTON
Attorneys for Los Angeles Evening Herald and Express Department of Hearst Publications, Incorporated.

(Duly verified.)

STOCKHOLDER EXHIBIT NO. 3

SPECIAL MEETING
of the
HERALD & NEWS UNIT
of the
LOS ANGELES NEWSBOY'S L.I. UNION
#75 CIO
8 PM
TUES. NITE. - OCT. 11
121½ S BROADWAY
(3 doors north of Mason Opera House)

ORDER OF BUSINESS:

HOW SHALL A
NEWSBOY HOLD
THE HERALD & NEWS?

Now that the day newsboys are selling both the Herald-Express and the Evening News, just what is expected of them by the publishers? There have been a lot of rumors and each newsboy seems to have a different opinion on the matter. Let's get to the bottom of this problem!!

This meeting is being called for the purpose of setting a standard guide for all newsboys and to establish a permanent arrangement on this matter. Also to draw up an agreement by which Herald & News newsboys can co-operate satisfactorily with

both the Herald district-men and the News district-men.

Be present at this meeting, and bring your best suggestions to settle this question.

PAT COMORRE,
Organizer,
Newsboy's L.I.U.#75,CIO

8 P.M.
TUES. NITE- OCT. 11
121½ S. BROADWAY
(3 doors north of the Mason Opera House)

10/8-1938

STOCKHOLDERS EXHIBIT No. 4

[Title of Board and Cause.]

No. XXI-R-927

STIPULATION RESPECTING TESTIMONY OF DUTTON O'BRIEN

It Is Hereby Stipulated By and between Frank A. Mouritson, as attorney for National Labor Relations Board, and Binford & Binford, as attorneys for Stockholders Publishing Company, Inc., that if Dutton O'Brien (circulation manager of The News) were called to testify that his testimony would be as follows:

That The News has a daily average circulation of 195,191 within the State of California,

as set forth in the agreed statement of facts, the Board's Exhibit No. 10, and that it has a daily average circulation of 534 outside of the State of California, as set forth in said agreed statement of facts;

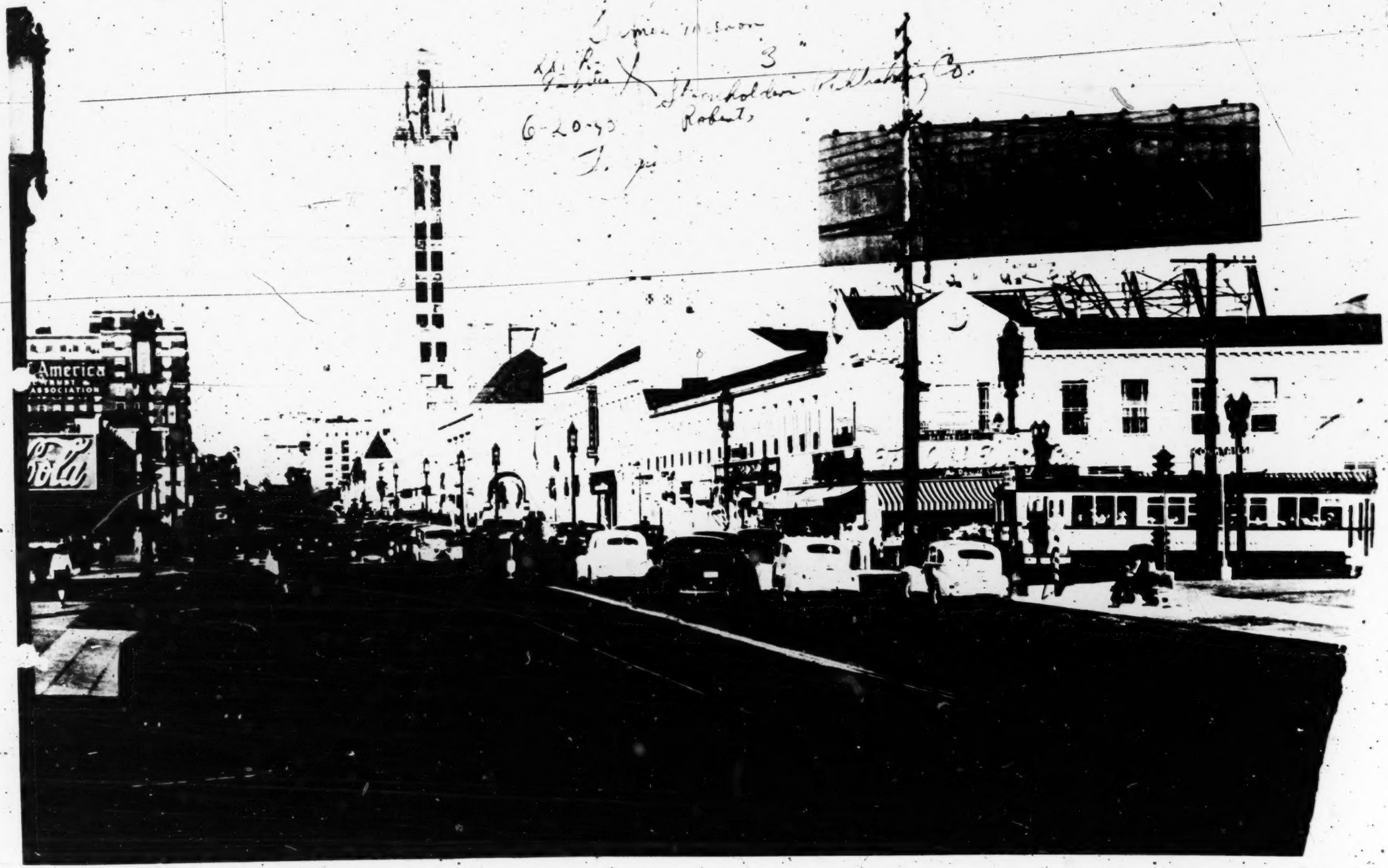
That the street sale newsboys as such newsboys have been defined in this hearing, do not sell or handle in any manner whatsoever any of the copies of said newspaper which are sold or distributed outside of the State of California;

That any change in the volume of the sales of street sale newsboys would not increase or decrease the volume of the sales of the newspaper outside of the State of California.

It Is Agreed By and between the parties hereto that this stipulation may be admitted in evidence as Stockholders Publishing Company, Inc.'s Exhibit No. ——.

FRANK A. MOURITSEN,
Attorney for National Labor Relations Board.

BINFORD & BINFORD,
By HOWARD M. BINFORD,
Attorneys for Stockholders Publishing Company, Inc.


America
INVEST
ASSOCIATION
Cola

X-XI-R-
42 Lots
6-2140
Franklin

Stockholders Publishing Co.

EXAMINER'S EXHIBIT NO. 1

[Title of Board and Cause.]

CASE NO. XXI R 1084
250 inv.

ANSWER TO PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9 (c) OF THE NATIONAL LABOR RELATIONS ACT.

Reserving all rights asserted under its motion to dismiss petition filed concurrently herewith, Hearst Publications, Incorporated (Los Angeles Examiner Department), a corporation, for itself alone, files this its Answer to Petition for Investigation and Certification of Representatives Pursuant to Section 9 (c) of the National Labor Relations Act.

1. Denies that Hearst Publications, Incorporated (Los Angeles Examiner Department), is the employer of the persons claimed to be represented by Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.

2. Denies that any or "all newsboys engaged in the street sale of the Los Angeles Examiner within the City of Los Angeles, California" is the appropriate bargaining unit.

3. Denies that "such unit" has 310 employees, or any employee, of Hearst Publications, Incorporated (Los Angeles Examiner Department), among

newsboys engaged in the street sale of Los Angeles Examiner within the City of Los Angeles, California.

4. Denies that the "numbers or percentage of employees in such unit who have designated or selected" said Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. "to be their representative for collective bargaining" is 250, or any other greater or lesser number.

5. Denies that Hearst Publications, Incorporated (Los Angeles Examiner Department), has ignored requests or any request for bargaining conferences with any group representing its employees, and alleges that said Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., does not represent a majority or any substantial fractional part of the newsboys engaged in the street sale of the Los Angeles Examiner at established spots and corners or elsewhere within the City of Los Angeles, California.

6. Denies that any question concerning the representation of said newsboys is a question affecting commerce within the meaning of the National Labor Relations Act.

Wherefore, Hearst Publications, Incorporated (Los Angeles Examiner Department), prays that the petition of Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., for Investigation and Certification of Representatives Pursuant to Sec-

tion 9 (c) of the National Labor Relations Act be dismissed.

LAWLER, FELIX & HALL,
A. LAURENCE MITCHELL,
By JOHN M. HALL,
Attorney for Hearst Publications, Incorporated (Los Angeles Examiner Department).

(Duly verified.)

EXAMINER'S EXHIBIT NO. 2

[Title of Board and Cause.]

Case No. XXI-R-1084
250 inv.

MOTION TO DISMISS PETITION FOR INVESTIGATION AND CERTIFICATION OF REPRESENTATIVES PURSUANT TO SECTION 9 (c) OF THE NATIONAL LABOR RELATIONS ACT

Comes now Hearst Publications, Incorporated, (Los Angeles Examiner Department), a corporation, and, severing itself from all other persons and appearing specially for the purpose of objecting to the jurisdiction of the National Labor Relations Board, moves to dismiss the Petition of Los Angeles Newsboys Local Industrial Union No. 75, C. I.

O., for Investigation and Certification of Representatives Pursuant to Section 9 (c) of the National Labor Relations Act, in so far as said petition pertains to Hearst Publications, Incorporated (Los Angeles Examiner Department).

Said motion is made on each and all of the following grounds:

1. No one of the members of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is an employee of Hearst Publications, Incorporated (Los Angeles Examiner Department).

2. Each and all of the newsboys engaged in the street sale of Los Angeles Examiner at established spots or corners or elsewhere within the City of Los Angeles, California, is and are independent contractors.

3. No question affecting commerce has arisen or can arise concerning the representation of the alleged employees (said Union members) of Hearst Publications, Incorporated (Los Angeles Examiner Department).

4. The Board has no jurisdiction over Hearst Publications, Incorporated (Los Angeles Examiner Department) or over the business conducted by it.

5. The relations of Hearst Publications, Incorporated (Los Angeles Examiner Department) with the alleged employees (said Union members) are not subject to the jurisdiction of the Board.

6. No claimed labor dispute between Hearst Publications, Incorporated (Los Angeles Examiner Department) and said alleged employees (said

Union members) can affect commerce within the meaning of the National Labor Relations Act.

The right to make this motion or to object to any adverse ruling on the same shall not be deemed waived by Hearst Publications, Incorporated (Los Angeles Examiner Department) by the filing of its Answer herein or by any participation by it in the proceedings before the Trial Examiner or the Board; the movant relies upon Article III, Section 4, and Article II, Sections 14-18, inclusive, of Rules and Regulations, Series 2—as amended, of the National Labor Relations Board.

Dated: June 10, 1940.

LAWLER, FELIX & HALL
A. LAURENCE MITCHELL,
By JOHN M. HALL,
Attorneys for Hearst Publications, Incorporated (Los Angeles Examiner Department)

Times-Mirror Exhibit No. 6 (Continued)

FRANK CURTIS, District Man (Contd.)

Hustler	Corner
Bennett Hoffman	7th and Vermont
Alphonso T. Turner	Wilshire and Vermont
Walter J. Walsh	Wilshire and Vermont
Joe Catanese	Wilshire and Vermont
Richard H. Costello	Wilshire and Vermont
Joseph A. Doucette	6th and Vermont
Harry Brown	3rd and Vermont
Clarence L. Senkus	3rd and Catalina
Lew Leslie	Wilshire and Catalina
C. E. Oster	Brown Derby
Ernest Silk	9th and Alvarado
Harry Buckley	7th and Alvarado
Julius Berger	Wilshire and Alvarado
H. H. Hoffman	6th and Alvarado
Charles E. Tate	3rd and Alvarado
Henry Fisher	6th and Rampart
Thomas G. Sullivan	Wilshire and Rampart
William Melrose	8th and Hoover
Emil C. Larndgraff	Wilshire-Wilshire Dr.
Mason Peterson	6th and Bixel
Harry Crang	6th and Witmer
J. Lucian Taylor	Mayfair Hotel
Thomas Gallagher	7th and Union
Sidney Malorrus	Smith Market
William Tries	6th and Union
Richard E. Guevara	6th and Bonnie Brae
Joe Stevold	6th and Burlington
C. H. Arnold	7th and Francisco
Jack Ross	11th and Georgia
Joe Gaveta	11th and Sentous
Hermona Gellman	11th and Valencia
Jack Warner	11th and Burlington
Ben Lautman	11th and Alvarado
Micheal Ray	9th and Union
Lewis Zatola	9th and Sunbury
Eddy Coontz	7th and Valencia
James J. Melasher, Jr.	Wilshire and Western

Times-Mirror Exhibit No. 6 (Continued)

B. Y. BOGUE, District Man (Contd.)

Hustler	Corner
Alex. Akloff	1st and Clarence
Asalvador Cuadra	1st and Cummings
Billie Hillander	1st and St. Louis
Cecil Silnutzer	Brooklyn and St. Louis
Isadore Bernstein	Brooklyn and Soto
William Matt	Wabash and Evergreen
Tony Chapouris	Brooklyn and Evergreen
Henry Kubo	4th and Soto

WILLIAM BULKLEY, District Man

E. J. Brown	Melrose and Larchmont
Elmer Weiss	Melrose and Vine
Al Bernstein	Santa Monica and Vine
John Smith	1248 No. Vine St.
Joe Baron	Afton Place and Vine St.
John A. Kircher	Sunset and Vine
Richard Kneeland	Sunset and Vine
George Boyle	Sunset and Vine
Melvin Howard	Hollywood Blvd. and Vine St.
Wallace Harmell	Hollywood Blvd. and Vine St.
Frank Shea	Hollywood Blvd. and Vine St.
George Albright	Hollywood Blvd. and Vine St.
Gordon West	Hollywood Blvd. and Vine St.
J. C. Lott	Pantages Theatre
Don Woodward	Al Levy's
John Miner	Hollywood Blvd. and Ivar St.
Joe Martin	Hollywood Blvd. and Cahuenga
Jim Mangan	Hollywood Blvd. and Cahuenga
Harold Lank	Hollywood Blvd. and Cahuenga
Angelo Rossitto	Hollywood Blvd. and Wilcox
Joe Kahler	Hollywood Blvd. and Wilcox
T. R. Lott	Hollywood Blvd. and Hudson
Fred Boorde	Hollywood Blvd. and Cherokee
Lloyd Raymond	Hollywood Blvd. and Las Palmas
John Leonard	Hollywood Blvd. and Highland
Fred Levine	Hollywood Blvd and Highland
Hymie Brotman	Hollywood Blvd. and Franklin
James Taylor	Chinese Theatre
Joe Shapiro	Hollywood Blvd. and Sycamore

Times-Mirror Exhibit No. 6 (Continued)

WILLIAM BULKLEY, District Man (Contd.)

Hustler	Corner
Steve Dolan	Sunset Blvd. and Highland Ave.
Harold Doberman	Sunset Blvd. and Highland Ave.
Jack Bennett	Sunset Blvd. and LaBrea Ave.
Frank Gallin	Sunset Blvd. and Gardner Junc.
Anthony Archangel	Sunset Blvd. and Fairfax Ave.
Dave Gutterman	Sunset Blvd. and Laurel Canyon
Harry Cohen	
Verne Mattox	
Irving Shapiro	Melrose Ave. and Larchmont
Frank Buttigliere	Hollywood Legion Stadium and Olympic Auditorium
Dominick Rossi	Hollywood Legion Stadium
Hal Davis	Hollywood Legion Stadium
Gene Herrington	Hollywood Legion Stadium
David Kohn	Hollywood Legion Stadium
Jack Travis	Hollywood Legion Stadium
Louie Christensen	Hollywood Legion Stadium

FRANK CURTIS, District Man

Frank Russel	9th and Western
Cornelia Repetti	Olympic and Western
Semi Secki	3480 W. 8th St.
Edward Miller	
Gunar A. Nelson	
Charles Smith	
Joseph P. Curtis	3rd and Catalina
Abe Malcheoff	9th and Vermont
Raymond Contauo	Ambassador Hotel—Elevator Man
John Ames	Ambassador Hotel—Elevator Man
Bill Loeber	8th and Normandie
Pat Maietta	3683 Wilshire
Fletcher Chaneay	Wilshire and Western
Gene Gilbert	Wilshire and Western
Theadore E. Miller	Wilshire and Western
Morris Karlstein	6th and Western
Jerry Louis	5th and Western
Adolph Ruybal	3rd and Western
Sam Sokov	8th and Western
August Granke	8th and Vermont

TIMES MIRROR EXHIBIT No. 6

NAMES OF PERSONS, AND LOCATIONS WHERE ENGAGED, IN SELLING LOS ANGELES TIMES (AS OF MAY 1, 1940).

B. G. BOGUE, District Man

Hustler	Corner
Herb. Hosdgdon	Ave. 50 and York Blvd.
Herman Anderson	Eagle Rock and Colorado Blvds.
Pete Zamzuccuchie	Colorado Rite Spot
Ralph Waldhaber	Mission and Fair Oaks
Don and Russle Landine	Huntington and Fremont
John Daly	Huntington and Eastern
Frank Cusick	Old Santa Fe Depot
Joshoway Borbby	Whittier and Indiana
Nelson Weaver	Whittier and Kern week days
	Wit. and Ferris Saturday
Ralph Taylor	Whittier and Atlantic—week
	8th and Alvarado—Saturday
Earle Brown	Broadway and Daly
Robert Reed	Pasadena and Daly
Sam Hordison	Ave. 56 and No. Figueroa
Henry Ohlhausen	North Figueroa—Rite Spot—week
	6th and Union Saturday night
Chas. Peluquin	No. Figueroa and York Blvd.
Emmett Lovett	Temple and Broadway
Leonard Kluge	Sunset and Main
Clifford Duffy	Aliso and Alameda
Pete Kelly	Philippe
Morris Cramer	1st and Boyle
Charles Goldman	Brooklyn and Soto
Phil. Coakley	Whittier and Soto
Emma Embling	Whittier and Lorena
George Babashoff and	Whittier and Chicago
Jack Babashoff	
George Mataisz	Whittier and Atlantic
Lope Alamillo	1st and Rowan
Bob Tucker	Brooklyn and Chicago
Alex Galipeaux	9th and Boyle
Harold London	Whittier and Kern
Olive Arnold	4700 Block on Whittier Blvd.

Times-Mirror Exhibit No. 6 (Continued)

HERBERT DONOGHUE, District Man

Hustler	Corner
Carlos Gonzales	1st and Main
Louis Zeimet	1st and San Pedro
Betty Mosely	Paris Inn Cafe
Raymond Bond	2nd and Main
Robert Keating	3rd and Main
Paul Garnett	4th and Main
Jack Dean	5th and Main
Byron Nelson	5th and Main
Jke Ottensoe	5th and Spring
Jiacimo Guagkardo	6th and Spring
Thomas Goble	7th and Spring
Wm. F. Cottingham	8th and Spring
Leslie Filburn	7th and Main
Wm. Gladwell	6th and Main
Henry Wilson	6th and Los Angeles
John Bartley	6th and Main
John Van Dillon	5th and Los Angeles
Thomas Granez	5th and Wall
Anthony Cantos	5th and San Pedro
John Hitchen	6th and San Pedro
Carl H. Becker	7th and San Pedro
Burt Westcott	9th and San Pedro
Armand Sanchez	5th and Stanford
Alfred Mobley	7th and Central
Thomas Wysocki	
Franklin Ried	7th and Gladys
William Smith	

MAX DYER, District Man

Samuel Margolis	7th and Spring—6 days
	7th and Pedro—1 day
Ivar Espeland	7th and Spring
Judah Kessler	6th and Spring
Louis Schwartz	6th and Spring
Karsten Thomsen	6th and Broadway
Sew Anycle	6th and Broadway
Cecil Kyle	6th and Main—6 days
	4th and Main—1 day

Times-Mirror Exhibit No. 6 (Continued)

MAX DYER, District Man (Contd.)

Hustler	Corner
Earl Cropper	P. E. Depot
Edward Smith	8th and Main
Charles Noland	9th and Main
Louis Mailman	11th and Broadway
Charles Brown	9th and Broadway
John McKenzie	8th and Broadway
Christopher Lawn	7th and Broadway—6 days
	5th and Broadway—1 day
Richard Elrod	7th and Broadway—6 days
	5th and Los Angeles—1 day
Mike Kelly	7th and Broadway—6 days
	2nd and Main—1 day
Ed. Henderson	5th and Towne
Emili Dominguez	7th and Central
Roy Maine	7th and Central
Max Domsehke	7th and San Pedro
Robert Smith	9th and San Pedro
Charles Blanchard	7th and Los Angeles
Jack Harris	7th and Main—6 days
	2nd and Broadway—1 day
Frank Smith	7th and Main
Harry Lamont	5th and Broadway
William Fry	5th and Spring
Philip Fisher	Rosslyn Hotel
James Curtis	5th and Main
Al Ullman	5th and Main
Frank Baker	5th and Los Angeles
Erma Stewart	5th and Wall
Pete Carlson	5th and San Pedro—6 days
	Y. M. C. A.—1 day
William Russell	6th and Los Angeles
Morris Rosenblatt	P. E. Depot. (Inside)

WM. DYER, District Man

Jas. Housey	1st and Broadway
Daniel Zawatsky	2nd and Broadway
Geo. Perez	2nd and Hill
Louis Store	3rd and Hill
John C. Nelson	3rd and Hill
Elbert Rumford	4th and Hill

Times-Mirror Exhibit No. 6 (Continued)

WM. DYER, District Man (Contd.)

Hustler	Corner
Jos. Morse	4th and Broadway
Ralph Schutz	Subway
Melvin Spellman	5th and Hill
Herman F. Walters	5th and Hill
Kenneth Quinn	5th and Hill
Robert Walker	5th and Broadway
Ben. Benoit	5th and Olive
Ed. Patch	Biltmore Hotel
Irvine Levy	Mayflower Hotel
Max Seidl	6th and Olive
Joe Pico	6th and Grand
Fred Jennings	6th and Hill
John Fields	6th and Broadway
Geo. Taggart	7th and Hill
Max Finklestein	7th and Hill
Ralph Goode	7th and Broadway
Lawrence Mathews	7th and Broadway
Phil Russell	7th and Broadway
Wm. Hardwick	7th and Broadway
Fred J. Fischer	8th and Broadway
G. E. Bowman	9th and Broadway
Ed. P. Gussman	8th and Hill
David Russell	9th and Grand
John Faine	8th and Flower
Earl Morehead	8th and Figueroa
Edw. Young	7th and Figueroa
Frank Achelpohl	6th and Figueroa
John Clary	6th and Flower
Raymond Bond	5th and Figueroa
Henry Ziegler	3rd and Figueroa
Al Sorvello	2nd and Figueroa
Bert Young	3rd and Broadway
Ferdinand Vahl	8th and Hope
John Huber	9th and Figueroa
Bill Andrews	8th and Olive
Bud Hansen	7th and Grand
Art Peterson	7th and Olive
George Gillmot	Olymp. and Figueroa
Thos. Roeff	Biltmore Hotel

Times-Mirror Exhibit No. 6 (Continued)

LEOPOLD GLASER, District Man

Hustler	Corner
James O'Connor	Wilshire and LaBrea
Irving Lareson	Wilshire and LaBrea
Leonard Hollett	Wilshire and LaBrea
Frank Murphy	Wilshire and LaBrea
Bob Wootan	6th and LaBrea
Eugene Del Rio	Olympic and LaBrea
Art Stool	Wilshire and Detroit
Gene Lafleur	Wilshire and Cloverdale
Peter Hartman	Wilshire and Cochran
Manuel Pinsky	Wilshire and Cochran
Joe Eno	Wilshire White Spot
Wm. Morris	Wilshire and Hauser
Chas. Quimby	Wilshire and Fairfax
Meyer Tomchin	San Vicente and Fairfax
Phil Klein	Palm Market
Bert Griffith	Fox Wilshire Theatre
William Hyde	Prime Rib Restaurant
Bill Gibson	Eaton's Rest, La Cienega
Sam Fisher	Wilshire and Robertson
Bill Hudson	Wilshire and Doheny Dr.
Bill Carter	Ralph's Market, Beverly Hills
Mike George	Warner Bros. Theatre
Joe Dorlet	Wilshire and Canon Dr.
Richard Nicholson	Beverly Dr. and Wilshire
Joe Wahovitz	9th and LaBrea
Hugh Dearing	Wilshire and La Cienega
Harold Wolfe	Santa Monica and Beverly Drive
Lake Vane	Brown Derby, Beverly Hills
Al Bartel	Beverly-Wilshire Market
Walter Wolfe	Santa Monica and Wilshire
Manuel Monte	Santa Monica and Roxbury Drive
Marvin Altschuler	Santa Monica and Canon Drive
Charles Bizayiff	Loew's Prime Rib Restaurant, La Cienega
Harold Fish	Santa Monica and Sawtelle Blvd.
Joseph Dubey	Westwood Village
Lou Kingland	Village Theatre, Westwood

Times-Mirror Exhibit No. 6 (Continued)

LEOPOLD GLASER, District Man (Contd.)

Hustler	Corner
Jimmy Wallington	Owl Drug, Westwood
Austin Volker	Sontag's Westwood
Johnny Holmes	Wilshire and Westwood Blvd.
Warren Vermillion	Mrs. Grey's Inn, Westwood
Harry Vasquez	Santa Monica and Beverly Glen
Peter Vasquez	Pico and Westwood
Lester Vasquez	West-Ho Market, Westwood
Johnny Lopez	Safeway, Westwood
Buster Grady	J. C. Penny, Westwood
Billy Volker	Villa Market, Westwood

LAURENCE MATRANGA, District Man

Richard Valentine	Subway
Roy Parker	5th and Hill
Joe Rok	5th and Olive
James Jackson	5th and Grand
Herbert Loader	5th and Figueroa
Anthony Glubesee	3rd and Figueroa
Loren Moore	Biltmore Hotel—6 days 9th and Figueroa—1 day
August Speral	6th and Olive
Abraham Cohen	6th and Hill
David Edwards	(7th and Hill—6 days (9th and Figueroa—1 day.
Christen Milkksen	8th and Hill—6 days; 3rd and Hill—1 day.
Chris Voalka	8th and Olive—6 days Subway—1 day
Ceicel Echart	9th and Hill—6 days 6th and Broadway—1 day
Chas. Porter	7th and Olive
Wm. Marsh	7th and Grand
Chas. Krissrow	7th and Flower—6 days 5th and Olive—1 day
Louie Broda	6th and Grand
John Tonkovich	6th and Flower—6 days 7th and Hope—1 day
Louis Bueltner	6th and Figueroa
Lester Marion	7th and Figueroa

Times-Mirror Exhibit No. 6 (Continued)

LAURENCE MATRANGA, District Man (Contd.)

Hustler	Corner
Geo. Martini	8th and Figueroa
Herman Sandusky	5th and Hill
Pearl Brownell	7th and Broadway

THOMAS McKINNEY, District Man

Salvatore Fasone	Glendale and Fletcher
Toby Michel	Riverside and Fletcher
Nolan Byrd	San Fernando and Fletcher
J. L. Schush	San Fernando and Fletcher
Frank White	Brand and San Fernando
Robert Rossi	Los Feliz and San Fernando
Roy Ely	Los Feliz and Revere
Clifford Joy	Los Feliz and Revere
Roy Yancy	Brand and Maple
Sam Bozigoff	Central and Colorado
Fred Duncan	Colorado and Brand
Walter Moore	Brand and Broadway
Ed Manahan	Brand and Wilson
E. J. Nogues	Broadway and Glendale
Earl Hern	Glendale and Colorado
Wm. Mack	Olive and San Fernando
Ray Johnson	Colorado and Verdugo Rd.
Thomas Bell	Pacific and Colorado
Joseph Dzack	Glendale and California
Jack Goodfellow	Glendale and Broadway
Berner Moorman	Orange and Broadway
Salvador Regaledo	Brand and Wilson
Frank Rubino	(Brand between (Wilson and California
Bert Wade	Brand and Wilson
William Small	Brand, between Wilson and Broadway
Leonard Taylor	Brand and California
Richard Broom	Brand, between Wilson and California
Bill Findley	Brand and Broadway
Rufus Findley	Brand and Lexington
Charles McBean	Brand and Broadway

Times-Mirror Exhibit No. 6. (Continued)

THOMAS McKINNEY, District Man (Contd.)

Hustler	Corner
Robert Lang	Brand and Harvard
Eugene Packer	Brand and Harvard
Robert Matchman	Orange and Broadway
Bill Stark	Chevy Chase and Central
Howard Stark	Palmer and Central
Allen Duffey	Central and Vine
Robert Anderson	Central, between Harvard and Hawthorne
Hal Shannep	Central and Broadway
Charles Moorman	California and Central
Robert Gilkinson	Orange and Wilson
Richard Thompson	Brand and Broadway
Charles Matchman	Orange and Wilson
Bob McKay	Highland and Glenoaks
Dane Moore	1635 Glenoaks, Glendale
Fred Welles	Chevy Chase and Broadway
Wendy Rough	Tujunga and Glenoaks
Ira Wyatt	Alameda and Victory
Carol L. Jones	Glendale Ave. and Los Feliz
William Mack	Magnolia and San Fernando
Rodolfo Tirre	Olive and San Fernando
Nick DeLuca	6329 San Fernando Rd.
Ethbert Brown	Brand and San Fernando
Dick Bench	1126 E. Chevy Chase
Paul Sauer	1104 E. Chevy Chase
Orrin Kambertad	Colorado and Chevy Chase
Frank Rowan	Colorado and Verdugo
Jim Wheeleham	Lexington and Verdugo
Bill Hanson	Central and Stocker
Charles Brodersen	San Fernando and Grover
Wavy Murphy	Orange and San Fernando
Fred Saenz	Angeleno and San Fernando
Bill Colgan	Tujunga and San Fernando
Ralph Hunt	Verdugo and San Fernando
Frank Novega	Olive and San Fernando
Robert Purrier	Near Alameda and San Fernando
Leroy Kelly	Sonora and San Fernando
Manuel Madince	Magnolia and San Fernando
Dale Guard	Victory and Providencia
Lawrence Dyer	Victory and Olive

Times-Mirror Exhibit No. 6 (Continued)

DANIEL J. MICKMAN, District Man

Corner	Hustler
Jack Forster	Florence and Pacific
Mario Campo	Florence and Santa Fe
Roy Robbins	Florence and Compton
Frank Canada	Florence and Avalon
Ernest Bahr	Florence and Broadway
Harry Boyd	Manchester and Broadway
Angelo Bianchini	54th and Broadway
Baker Silver	Jefferson and Central—5 days
	Pico and Main—1 day
Arthur James	42nd and Central
Robert McLeod	Vernon and Long Beach
Dane Petite	Slauson and Compton
John Carter	Slauson and Pacific
Harry Rosenberg	Randolph and Pacific
Frank Erickson	Clarendon and Pacific
Jack Foley	Gage and Pacific
Lee Burns	Zoe and Pacific
Cornelis Hagan	12th and Main
Ricardo Perez	Washington and Main
Joe Wahovicz	Jefferson and Main
Margarito Archibeque	Vernon and Broadway
Henry Connors	Vernon and Avalon
Luis Broguiere	12th and Central
Carlisle Perry	Vernon and Central
John Huatow	Washington and San Pedro
Joseph Parker	Jefferson and Central
Bill Ortiz	61st and Broadway
Mrs. Etta Wien	51st and Broadway
Tom Enright	47th Place and Broadway
Ruben Cordova	46th and Broadway
Manuel Lopez	Vernon and Broadway
Albert Allen Greenberg	Vernon and Main
Earnest Escovar	Jefferson and San Pedro
William Alfred Verrine	46th and Broadway
Dave Kadesh	Manchester and Broadway

Times-Mirror Exhibit No. 6 (Continued)

WILLIAM MOORE, District Man

Hustler	Corner
Armando Armijo	Beverly and Alvarado
Dennes Bohnan	4667 Beverly
Paul O. McLachlan	1st and Vermont
MacRae, H. B.	Gaston's, 7517 Beverly Blvd.
Roy Swink	Beverly and Vermont
Ed Cook	Beverly and Vermont
Joe Powell	Beverly and Vermont
Orlando Lopez	Beverly and Vermont
Don Voris	3rd and LaBrea
Bob Mijens	Beverly and LaCienega Blvd.
Rosebud Sampson	470 S. Fairfax (Soft Ball Park)
Ike Reich	3rd and Fairfax
Larry Kelly	Beverly and Fairfax
Clarence A. Horner	Beverly and Fairfax
F. Mahoney	3rd and Robertson
E. Konigsberg	Beverly and Fairfax
Marshall Koploy	Hollywood Stadium Ball Park
Jerry Flier	Hollywood Stadium Ball Park
Leonard Shumacher	Hollywood Stadium Ball Park
M. Horowitz	Hollywood Stadium Ball Park
J. Larsen	Hollywood Stadium Ball Park
James Nagy	Hollywood Stadium Ball Park
Luis Martinez	Hollywood Stadium Ball Park
Seymour Lieb	Hollywood Stadium Ball Park
Perry Lee Wade	Santa Monica and Highland
Bill Bell	Santa Monica and LaBrea
Larry Baldwin	Melrose and LaBrea
Howard Dupuis	Hollywood Stadium Ball Park
Frank Kaminsky	LaBrea and Oakwood
Frank Lange	Melrose Market, 7355 Melrose Ave.
Theodore Auguest	Beverly White Spot, 7266 Beverly
Bill Morgan	Beverly and LaBrea
Norman Blair Woodson	Best Food Market, Beverly Blvd.
Adolph Restau	Beverly and Western
James S. Stacy	Beverly and Western
George A. Gross	Beverly and Western
Joe Adams	Beverly and Western

Times-Mirror Exhibit No. 6 (Continued)

WILLIAM MOORE, District Man (Contd.)

Hustler	Corner
W. C. Palmquist	Ralph's Market, Western
Percy Shelley	Beverly and Larchmont
Carl Johnson	Melrose and Highland
Leo Bran	Pellos Market, 403 N. Fairfax
John Busquet	Melrose and Fairfax
N. F. Yoder	Santa Monica and Fairfax
A. J. Sikorsky	Pan Pacific Auditorium
Thos. J. Lorell	Melrose and LaCienega
Emil Weister	508 Doheny Drive
W. C. Glaze	Beverly and Robertson
Richard L. Frost	3rd and LaCienega
George Hendrickson	Melrose and LaBrea
Hyde Jenkins	3rd and LaBrea
John King	9095 Santa Monica Blvd.

JACK SHEMARIA, District Man

Ed. F. Richards	Jefferson and Vermont
Alfred Moline	39th and Vermont
Frank White	39th Place and Vermont
Bert Louis	Santa Barbara and Vermont
Louis Fredte	Santa Barbara and Vermont
Tom Shearer	Santa Barbara and Vermont
Claude Warburton	Vernon and Vermont
Leonard Rosenbaum	48th and Vermont
David Menkes	Washington and Hoover
David Keream	Washington and Hoover
James Cochran	Washington and Vermont
C. W. Rardin	Washington and Vermont
Irwin Purman	24th and Vermont
Arthur Stone	Adams and Vermont
Clarence Cope	Washington and New England
Ed Varon	31st and Vermont
Oscar Bordner	Pico and Georgia
Joe Sarter	Pico and Alvarado
Loui Condiotti	Pico and Arapahoe
Max Greenwold	Pico and Vermont
Joe Venuti	Pico and Vermont
Irwin Varon	Pico and Vermont

Times-Mirror Exhibit No. 6 (Continued)

JACK SHEMARIA, District Man (Contd.)

Hustler	Corner
Charles Padgett	Pico and Vermont
Ed Saldivar	Venice and Vermont
John Jones	54th and Vermont
Stanley Trager	54th and Vermont
Louis Fredte	Vernon and Vermont
Morton Miller	Slauson and Vermont
Charles Bilyk	Florence and Vermont—1 day
	Slauson and Vermont—6 days
Charles Burges	Florence and Vermont
Russel Carson	Pico and Figueroa
August Sperl	Pico and Flower
Ottavio Ciarletta	Pico and Hope
Charlie Goodin	Venice and Figueroa
Elban Chelton	Washington and Figueroa
Joe Bojorquez	27th and Figueroa
C. J. DePotuy	Adams and Grand
George Miller	Jefferson and Grand
Harry D. Drake	Jefferson and Figueroa
Tom Stephens	35th and Figueroa
Harry Sweet	Flower and Figueroa
George Smith	Santa Barbara and Figueroa
H. W. Cunningham	42nd and Figueroa
Hector Ortega	Vernon and Figueroa
Ingwald Munson	Slauson and Figueroa
Russel Carson	Florence and Figueroa
M. B. Good	Pico and Figueroa
Jack Cole	Santa Barbara and Figueroa
Edie Zavala	Florence and Vermont
John Allen	Florence and Figueroa
Emmett Longstaff	Manchester and Vermont

HEATH SMITH, District Man

Mark Hardin	Sunset Blvd. and Echo Park Ave.
Sam Kurtz	Sunset Blvd. and Echo Park Ave.
Peter Buttigliere	3rd and Olive
Geo. W. Parmer	3rd and Grand
Alex Rudolf	Sunset Blvd. and Figueroa
Isaac Arouh	Temple and Centennial

Times-Mirror Exhibit No. 6 (Continued)

HEATH SMITH, District Man (Contd.)

Hustler	Corner
Angie Kalb	Temple and Beaudry
Alfred Venegas	Temple and Belmont Ave.
Albert Nave	Bon Ton Market, Sunset Blvd.
Ed. Bowles	Sunset Blvd. and Silverlake Ave.
Leo Melowick	Sunset and Griffith Park
Jack Lipson	Sunset Blvd. and Griffith Park
Don Smith	Sunset Blvd. and Alvarado
Benny Berman	Sunset Blvd. and Alvarado
Lewis Monico	Sanborn Jct. Sunset Blvd. and Santa Monica Blvd.
Robert Drayton	Sunset Blvd. and Vermont Ave.
Marvin Doberman	Fountain Ave. and Vermont Ave.
Herman Grender	Santa Monica and Vermont
Harold Drapkin	Santa Monica and Vermont
Harvey Elkin	Vermont and Burns Ave.
Lee Barry	Santa Monica and Western
Cyril Emett	Santa Monica and Western
Raymond Tipton	Santa Monica and Western
Arthur Jackson	Santa Monica and Western
Bernard Cutler	Santa Monica and Western
Earle Waggner	Melrose and Western
Archie Mcdougall	Melrose and Van Ness
Robert Burns	Melrose and Heliotrope
Frank Wahl	Hollywood and Western
Alan Manning	Franklin and Bronson
T. L. Richards	Hollywood and Gower
George Krug	Sunset and Gower
George O'Brien	Sunset and Bronson
Frank Kurtz	Sunset and Gower
James Deutsch	Sunset and Western
[This man (James Deutsch) is on Times' payroll, receiving $12.60 per week.]	
Porfirio Vasquez	Sunset and Western
Sidney Goldstein	Vista and Sunset
Frank Abadino	Hollywood and Vermont
Marvin Greenburg	Prospect and Vermont
Laurence Weisman	Kingswell and Vermont
Bradley Gelino	Montana and Vermont

Times-Mirror Exhibit No. 6 (Continued)

HEATH SMITH, District Man (Contd.)

Hustler	Corner
Arthur Martin	Franklin and Vermont
Clyde Derryberry	Hollywood and Normandie
William Nichols	Hollywood and Western
Robert Olmstead	Melrose and Vermont—6 days Sunset and Silverlake—1 day
Seymour Taulman	Melrose and Vermont

WALTER VERRY, District Man

John Pendergast	Pico and Western
R. Eley	Pico and Western
A. H. King	Pico and Norton
Frank Shortess	Pico and Crenshaw
A. Gerhard	Pico and Rimpau
Edward Meyers	Pico and LaBrea
Albert Torres	Pico and Houser
Herman Davis	Pico and Redondo Saturday Washington and Rimpau daily
Don Gordon	Pico and La Cienega
Dave Allen	Pico and Robertson
Eddie Kehoe	Washington and Western
John Brad	Washington and Arlington
Stanley M. Stern	Washington and Crenshaw
Will not give his name because he receives a pension from somewhere	Adams and Normandie
George Badden	Adams and Normandie
Emery Rasmusson	Adams and Western
Michial O'Brien	Adams and Western Saturday Pico and LaBrea daily
Herman Osterndorf	Jefferson and Arlington
Phillip Tells	39th and Western
Edward M. Wiseman	Santa Barbara and Western
William Taylor	Vernon and Western
D. J. Robertson	Vernon and Western
Edward Vogt	54th and Western
Jack Pairry	Slauson and Western

Times-Mirror Exhibit No. 6 (Continued)

WALTER VERRY, District Man (Contd.)

Hustler	Corner
Jack Proctor	Florence and Western daily Jefferson and Arlington Saturday
Wm. B. Prowse	Slauson and Crenshaw
Edward Brown	54th and Crenshaw
Meyer Bendat	Leimert Park or 43rd and Crenshaw
Tom Wilson	Adams and Crenshaw
Gustave A. Rose	48th and Western
James Harrington	
George Loften	Jefferson and Western
Ned Mortier	54th and Western

ALLAN WESTENHISER, District Man

Jesse Mario	1st and Spring
Ricardo Robrionz	1st and Main
Daniel Duron	Post Office
Marie Unger	T. Broadway
Charlie Unger	T. Broadway
Warren Evans	1st and Broadway
Harold Stout	2nd and Broadway
Charlie Steele	2nd and Hill
Jim Hark	3rd and Hill
Manual Duran	4th and Hill
Larry Douglas	4th and Main
Walter Stoermer	4th and Spring
Patrick Biggs	4th and Broadway
Henry Schultz	3rd and Broadway
Charlie Hart	3rd and Spring
Clint Bentley	3rd and Main
Carl Witt	2nd and Main
Ben Elmers	2nd and Spring
Oscar Moler	County Jail

TIMES MIRROR EXHIBIT No. 7

TABLE SHOWING PERCENTAGE OF DAILY OUT-OF-STATE SALES TO TOTAL AVERAGE DAILY NET PAID CIRCULATION

Year	Average Net Paid Circulation	Out-of-State Sales	Percentage Out-of-State Sales to Total
1939	220,266	3,935	1.7

TABLE SHOWING PERCENTAGE OF SUNDAY OUT-OF-STATE SALES TO TOTAL AVERAGE SUNDAY NET PAID CIRCULATION

Year	Average Net Paid Circulation	Out-of-State Sales	Percentage Out-of-State Sales to Total
1939	367,814	9,197	2.5

TABLE SHOWING PERCENTAGE OF DAILY STREET SALES TO TOTAL AVERAGE NET PAID CIRCULATION (DAILY)

Year	Total Net Paid Circulation	Street Sales	Percentage Street Sales to Total
1939	220,266	13,958	6.3

TABLE SHOWING PERCENTAGE OF SUNDAY STREET SALES TO TOTAL AVERAGE NET PAID SUNDAY CIRCULATION

Year	Total Net Paid Circulation	Street Sales	Percentage Street Sales to Total
1939	367,814	31,720	8.7

TESTIMONY

United States of America
Before the National Labor Relations Board
Twenty-First Region

Case No. XXI-R-927

In the Matter of

STOCKHOLDERS PUBLISHING CO., INC.,
and

LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.

Case No. XXI-R-928

In the Matter of

HEARST PUBLICATIONS, INC., (Los Angeles Evening Herald & Express Department),
and

LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.

Case No. XXI-R-1062

In the Matter of

TIMES-MIRROR COMPANY
and

LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O. [1*]

*Page numbering appearing at top of page of original certified Transcript of Record.

Case No. XXI-R-1084

In the Matter of

HEARST PUBLICATIONS, INC., (Los Angeles Examiner Department)

and

LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION NO. 75, C. I. O.

Room 810, United States Post Office and Court House Building,
Los Angeles, California,

Monday, June 10, 1940

Met, pursuant to notice, at 9:30 o'clock a. m.

Before:

Thomas H. Kennedy, Trial Examiner.

Appearances:

Frank A. Mouritsen, Attorney on behalf of the National Labor Relations Board.

L. B. Binford and Howard M. Binford, appearing on behalf of Stockholders Publishing Co., Inc., 606 South Hill Street, Los Angeles, California.

Flint & MacKay, by Edward L. Compton and Donald W. Hamblin, 458 South Spring Street, Los Angeles, California, appearing on behalf of Hearst Publications, Inc., Los Angeles Evening Herald & Express Department.

Lawler, Felix & Hall, and A. L. Mitchell, by John M. Hall, Marcus Mattson, 605 West Tenth Street, Los Angeles, California, appearing on behalf of Hearst Publications, Inc., Los Angeles, Examiner Department. [2]

Cosgrove & O'Neil, by T. B. Cosgrove and F. B. Yoakum, Jr., 458 South Spring Street, Los Angeles, California, appearing on behalf of the Times Mirror Company.

Pat Comorre and Roy Eley, appearing on behalf of Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. [2-A]

PROCEEDINGS

Trial Examiner Kennedy: The hearing will be in session.

This is a formal hearing in the matter of Stockholders Publishing Company, Inc., Case No. XXI-R-927; Hearst Publications, Inc., Los Angeles Evening Herald & Express Department, Case No. XXI-R-928; Times-Mirror Company, Case No. XXI-R-1062; and Hearst Publications, Inc., Los Angeles Examiner Department, Case No. XXI-R-1084, before the National Labor Relations Board.

Counsel have stated their appearances for the record and I have the following appearances in that connection.

In the case of XXI-R-927, the Petitioner is Newsboys Local Industrial Union No. 75, Los Angeles, California, C.I.O., represented by Pat Comorre and Roy Eley, 212 West Third Street, Los Angeles, California.

The company involved is the Stockholders Publishing Company, Inc. The address is 1271 South Los Angeles Street, represented by Messrs. L. B. Binford and Howard M. Binford, [4] attorneys at law, 1208 Hollingsworth Building, Sixth and Hill Streets, Los Angeles, California.

In case No. XXI-R-928, the company involved is Hearst Publications, Inc., Los Angeles Evening Herald and Express Department. The Petitioner

is the same as in Case No. XXI-R-927, and the representation of that Petitioner is the same. The company is represented by H. S. MacKay, Jr., Edward L. Compton, and Donald W. Hamblin, attorneys at law, 1232 Rowan Building, Los Angeles, California. The address of the company is 1243 Trenton Street, Los Angeles, California.

The company involved in Case No. XXI-R-1062 is the Times-Mirror Company. The address of that company is 202 West First Street, Los Angeles, California. It is represented by Cosgrove and O'Neil, by T. B. Cosgrove and F. B. Yoakum, Jr., attorneys at law, 1030 Rowan Building, Los Angeles, California. The petitioner in this case is the same as in Case No. XXI-R-927, and the representation of the Petitioner is the same as in that case.

In Case No. XXI-R-1084, the company involved is Hearst Publications, Inc., Los Angeles Examiner Department. The address of the company is 11th and Broadway, Los Angeles, California. It is represented by Messrs. Lawler, Felix & Hall and A. L. Mitchell, attorneys at law at 800 Standard Oil Building, Los Angeles, California. Those present in the court room are John M. Hall and Marcus Mattson. The [5] Petitioner is the same as in case No. XXI-R-927, and the representation of the Petioner is the same as in that case.

Counsel for the Board is Mr. Frank A. Mouritsen.

The Trial Examiner appearing for the National Labor Relations Board is Thomas H. Kennedy. [6]

The following statement is made to assist the parties in their presentation of evidence bearing on the issues:

In relation to the Board's investigation concerning the selection of representatives for the purposes of collective bargaining in this case, it is desired at the outset to make clear the position of the Trial Examiner and the Board's attorney. The sole objective of the Board's officers here is to obtain a full and complete factual record upon which the Board itself may discharge its duties under Section 9 of the National Labor Relations Act.

It is the duty of the Trial Examiner to see that the record is full enough to contain all the material evidence but to limit the testimony and refuse to permit the introduction of evidence which is not material and relevant. His discretion is limited by this duty with which he is charged. Your attention should also be called to the fact that in this type of case as distinguished from a case where the employer is charged with the commission of unfair labor practices in violation of the Act, the Trial Examiner does not render an intermediate report to the parties. The case goes directly to the Board for decision.

In general, the Board's attorney will present evidence bearing upon the question of the Board's jurisdiction over the parties and the subject matter of the investigation while the representatives of the other parties will be expected, [8] with the assistance of the Board's officers, if necessary, to

present evidence upon the remaining issues. The services of the Board's officers are equally at the disposal of all parties to the proceeding in developing such material evidence.

We shall inquire as to factors which help to answer the question of what is the appropriate bargaining unit, including the history of organizational efforts in the plant. We shall seek information about the nature of the question affecting commerce.

The evidence should disclose, as to the labor organizations involved, their identity, time of formation and general structure, including data as to eligibility of members, with particular reference to the employer here concerned. The time when organization began, the department or group of employees affected, the subsequent growth or decline of membership, present claims as to membership, and relations had with the employer, including the presence or absence of contracts, are all of importance. Information is also desired as to the date as of which the payroll of eligible voters should be taken, for purposes of election or certification.

In considering the appropriate unit for purposes of collective bargaining, the proof should reveal the physical properties involved, a detail breakdown of the nature of work [9] performed by employees as well as an analysis of the numbers of employees engaged in each type of work. The presence or absence of craft organizations should be established,

as well as evidence submitted on the identity or differentiation of employees' problems as to wages, hours, or working conditions. The past and present history of units used by the employer or by the industry in employee relationship should be disclosed.

Finally, the nature of the problem affecting commerce should be shown by proof as to whether conflicting claims as to representation are being made, or whether the employer questions the representative status of any of the parties.

These suggestions are of necessity not all-inclusive. They may, however, serve to guide the parties to a full and complete factual presentation in which the Board's officers here will, in an entirely neutral capacity, assist. The cooperation of all in order to get these facts as expeditiously as possible is requested.

Now, it is customary for the Board's attorney to present the first formal papers at this time, and I will ask him to do so.

Mr. Mouritsen: Mr. Examiner, I at this time offer the formal pleadings filed in this matter as Board's Exhibit 1, with the appropriate subdivisions as a unit;

As Board's Exhibit 1(a), a copy of the Rules and [10] Regulations, Series 2 as Amended, effective March 13, 1940;

As Board's Exhibit 1(b), the original petition filed in the matter of Stockholders Publishing Company, Inc., XXI-R-927; the jurat bears date April 18, 1939;

As Board's Exhibit 1(c), the original petition filed in the matter of Hearst Publications, Inc., Los Angeles Evening Herald & Express Department, XXI-R-928; jurat bears date April 18, 1939;

As Board's Exhibit 1(d) the amended petition filed in the matter of Stockholders Publishing Company, Inc., jurat bearing date June 12, 1939;

As Board's Exhibit 1(e), the order directing investigation and hearing in the matter of Stockholders Publishing Company, Inc., No. XXI-R-927.

Trial Examiner Kennedy: That is dated March 27th?

Mr. Mouritsen: That is dated July 31, 1939.

As Board's Exhibit 1(f), the amended petition filed in the matter of Hearst Publications, Inc., Los Angeles Evening Herald & Express Department; the jurat bears date February 5, 1940;

As Board's Exhibit 1(g), the original petition filed in the Times-Mirror Company, Case No. XXI-R-1062, the jurat bearing date March 18, 1940;

As Board's Exhibit 1(h), the order of the Board [11] directing investigation and hearing and consolidating cases, XXI-R-927, XXI-R-928, XXI-R-1062, bearing date March 27, 1940;

As Board's Exhibit 1(i), the original notice of hearing in the consolidated matters just enumerated, bearing date April 12, 1940;

As Board's Exhibit 1(j), the affidavit of service of the Notice of Hearing, Petitions and Amended Petitions, order directing investigation and consolidation, and a copy of the Rules and Regulations;

As Board's Exhibit 1(k), two sheets to which are attached registered return receipts of the United States Post Office Department, showing receipt of the documents mentioned in the affidavit of service;

As Board's Exhibit 1(l), the original petition filed in the matter of Hearst Publications, Inc., Los Angeles Examiner Department; the jurat bearing date May 10, 1940;

As Board's Exhibit 1(m), the amended notice of hearing dated May 15, 1940;

As Board's Exhibit 1(n), the affidavit of service of the amended notice of hearing; the jurat bearing date May 15, 1940;

As Board's Exhibit 1(o), two sheets to which are attached registered return receipts of the United States Post Office Department, showing receipt of the amended notice of hearing; [12]

As Board's Exhibit 1(p), the amended petition filed in the matter of the Times-Mirror Company, XXI-R-1062; jurat bearing date June 4, 1940;

As Board's Exhibit 1(q), an affidavit of service of the amended petition in the Times-Mirror matter, XXI-R-1062, upon Cosgrove & O'Neil, for the Times-Mirror Company, the jurat bearing date June 6, 1940;

As Board's Exhibit 1(r), a motion to dismiss petition for investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act, filed by Cosgrove & O'Neil in the matter of the Times-Mirror Company, XXI-R-1062, dated June 4, 1940;

As Board's Exhibit 1(s), an answer filed by the

Times-Mirror Company in the matter of XXI-R-1062, the verification of said answer bearing date June 4, 1940;

As Board's Exhibit 1(t), the order of the Board dated June 5, 1940, consolidated cases XXI-R-927, XXI-R-928, XXI-R-1062 and XXI-R-1084;

As Board's Exhibit 1(u), the notice of hearing dated June 5, 1940, of all four consolidated cases;

As Board's Exhibit 1(v), the affidavit of service of the notice of hearing dated June 5, 1940, together with copies of all petitions and amended petitions in the above consolidated matters, upon Felix, Lawler & Hall, counsel for Hearst Publications, Inc., Los Angeles Examiner Depart- [13] ment;

As Board's Exhibit 1(w), an affidavit of service of the notice of hearing dated June 5, 1940, together with copies of all Petitions and Amended Petitions, and Rules and Regulations, Series 2, as Amended, the jurat bearing date June 6, 1940;

As Board's Exhibit 1(x), a single sheet, to which is attached a number of registered mail return receipts, showing receipt of the notice of hearing as aforesaid;

As Board's Exhibit 1(y), the second amended petition filed in the matter of Stockholders Publishing Company, Inc., XXI-R-927, the jurat bearing date June 6, 1940;

As Board's Exhibit 1(z), an affidavit of service of the second amended petition in case XXI-R-927, upon L. B. Binford as counsel for the Stockholders Publishing Company, Inc.;

As Board's Exhibit 1(aa), the single sheet to which is attached return receipt of the United States Post Office Department, showing receipt of said second amended petition in the matter of Stockholders Publishing Company, Inc.;

As Board's Exhibit 1(bb), the second amended petition filed in the matter of Hearst Publications, Inc., Los Angeles Evening Herald & Express Department, XXI-R-928, jurat bearing date June 6, 1940;

As Board's Exhibit 1(cc), a motion to dismiss amended [14] petition for investigation and certification of representatives pursuant to Section 9(c) of the National Labor Relations Act, in the matter of Hearst Publication, Inc., Los Angeles Evening Herald & Express Department, Case No. XXI-R-928, dated June 6, 1940.

And with relation to this particular document filed by Mr. Compton, the Board is willing to and offers the stipulation that the motion shall apply to the second amended petition filed in this matter.

Mr. Compton: We accept that stipulation.

Mr. Mouritsen: As Board's Exhibit 1(dd), a stipulation filed in the matter of the Times-Mirror Company, XXI-R-1062, re applicability of motion to dismiss and answer to amended petition for investigation and certification of representatives dated June 6, 1940;

As Board's Exhibit 1(ee), an affidavit of service of a copy of the order directing investigation and hearing and consolidating cases in Stockhold-

ers Publishing Company, Inc., et al, XXI-R-927, XXI-R-928, XXI-R-1062, and XXI-R-1084, the jurat bearing date June 5, 1940.

I note, Mr. Examiner, that the registered mail return receipts indicating service of this order directing the consolidation of all these four cases were not returned. These were served on, or were sent, at least, to counsel for the Respondents, and that is Cosgrove & O'Neil, Flint [15] and MacKay, Lawler, Felix & Hall, Binford and Binford. Would counsel be willing to stipulate at this time that they are in receipt of such documents?

Mr. Cosgrove: Cosgrove and O'Neil will so stipulate.

Mr. L. B. Binford: L. B. Binford and Howard M. Binford will so stipulate.

Mr. Compton: Flint & MacKay will so stipulate.

Mr. Hall: Lawler, Felix and Hall and A. L. Mitchell so stipulate.

Mr. Mouritsen: Thank you.

As Board's Exhibit 1(ff), a motion to dismiss petition for investigation and certification of representatives pursuant to Section 9-C of the National Labor Relations Act, filed by Binford and Binford in the matter of Stockholders Publishing Company, Inc., Case XXI-R-927, dated June 7, 1940.

Mr. L. B. Binford: May we, Mr. Mouritsen, have a similar stipulation with reference to the same being applicable to the final amended petition?

Mr. Mouritsen: Yes, so stipulated.

As Board's Exhibit 1(gg), the answer filed by Binford and Binford in the matter of Stockholders Publishing Company, Inc., Case No. XXI-R-927, dated June 7, 1940;

As Board's Exhibit 1(hh), the certified copy of the Board's order designating Thomas H. Kennedy to act as Trial [16] Examiner in these consolidated matters.

At this time, Mr. Examiner, I desire to offer the documents I have enumerated as Board's Exhibit 1, and move their admission.

Trial Examiner Kennedy: Any objection?

Mr. Cosgrove: No objection, your Honor.

Trial Examiner Kennedy: There being no objection, they will be received in evidence. [17]

Trial Examiner Kennedy: Are we ready to proceed, gentlemen? The hearing will be in session.

Mr. Mouritsen: Mr. Examiner, during the recess, counsel for the Board and counsel for the various companies have dis- [22] cussed a method of operating during the hearing, and I will state what I understand the method of operation to be that we have agreed upon, and if I am incorrect, I will ask counsel for the companies to state what they understand.

I have outlined to counsel the method by which the Board proposes to proceed in this matter, having been requested by the Union to assist them in the presentation of the material they have to offer; and that is, that first the matter of the peti-

tion regarding the Los Angeles Evening Herald & Express Department of the Hearst Publications, Inc., will be gone into, the various points that are outlined in the petition; then the matter of the Stockholders Publishing Company will be considered.

Next, the matter of the Times-Mirror Company, and lastly the Los Angeles Examiner Department of Hearst Publications, Inc.

I have outlined to counsel the fact that it might be desirable, or they might desire to not be present, or that they might have other matters they desire to attend to while other phases of the matter are being considered.

For example, the Los Angeles Herald and Express will be a case of its own, and during the time while that matter is being presented, counsel for the Times and for the Examiner would have, so to speak, no right to participate in the offer of objections or to restrict testimony in that case, inasmuch [23] as the individual cases will be considered on the matters involving each company and will not depend one upon the other.

Trial Examiner Kennedy: Are you certain about that situation? The cases have been consolidated, have they not, Mr. Mouritsen?

Mr. Mouritsen: That is correct. However, as I understand the consolidation, it is merely one of convenience. The petitions in each instance refer only to the particular company.

Trial Examiner Kennedy: Well, are you cer-

tain that that is the situation? You remember we are making a record here and the people in Washington are going to review it. They are not hearing the case, and the order for consolidation was merely an order to consolidate the hearing. Or does it consolidate the entire record?

Mr. Mouritsen: Well, I think, of course, that could best be determined by examining the order of the Board in that matter.

Trial Examiner Kennedy: Yes. Let's take a look at that.

Mr. Mouritsen: That is Board's Exhibit 1(t).

Trial Examiner Kennedy: June 5, 1940; isn't that the last order?

Mr. Mouritsen: That is correct, yes. [24]

Trial Examiner Kennedy: I will say that the order says the cases are consolidated. I want you to take full notice of that, and if the Board's attorney is in position to stipulate for the Board and bind the Board on that matter, that is one thing. I wonder if you have authority to do that, Mr. Mouritsen?

Mr. Mouritsen: No. I may state that I have no authority to do that, but I have merely stated what I understand the situation to be. However, I desire to point out, Mr. Examiner, in support of that conclusion, that the facts regarding the operations of these newsboys differ materially between papers.

Trial Examiner Kennedy: I know it has never been the practice in cases where matters have been

consolidated—I do not know that I can recall a representation case, but I can complaint cases, where we have different respondents, entirely different situations and where the cases are consolidated it is possible to get them back into one phase of the case to support the contentions in another phase of the case, and that sort of thing.

Now, if everyone is apprised of that situation and is willing to proced the way counsel states the matter, no one is going to be prejudiced, and my understanding is that the cases are consolidated, and that to all intents and purposes it is one case; and from there on out you can agree to [25] proceed in any way you see fit.

Mr. Mouritsen: Well, I have suggested to counsel that it would be the procedure that we will consider first the matter of the Herald & Express, all matters outlined in the petition; that then we proceed to the Stockholders Publishing Company and the Times-Mirror, and lastly, the Los Angeles Examiner Department of Hearst Publications, Inc.

Trial Examiner Kennedy: Well, I think that would be the more desirable way to proceed, because it makes the record much simpler to handle for all concerned.

However, I think it is not quite proper to say that the Los Angeles Examiner, for example, has no interest in the case involving the Stockholders Publishing Company, and would not have the right to cross examine, and so forth, as to that phase of the case. I do not agree with you on that. If

the representatives of those organizations understand that, and will forego the right to participate, that is their lookout.

Mr. Mouritsen: Then our understanding, gentlemen, will have to be amended in the manner in which the Trial Examiner considers the matter.

Trial Examiner Kennedy: Yes.

Mr. Mouritsen: At this time, Mr. Examiner—

Mr. Cosgrove (Interrupting): May we have just a minute to confer here? We have not arrived at any conclusion as to what counsel for the Board has suggested, and if it is [26] agreeable, we will take just a minute among ourselves.

Trial Examiner Kennedy: Well, we will grant a short recess. I might ask you off th record at this time, is there any estimate as to the length of the hearing? Has anyone an idea about that?

Mr. Mouritsen: Well, I could state this, Mr. Examiner: I anticipate that it will take about two days to present the material that has been gathered regarding the Herald Express; that it will take shorter than that time to present the information regarding the Stockholders Publishing Company since they are more or less related, as the Trial Examiner will see, as we proceed; and I anticipate perhaps a day and a half for the other two.

Trial Examiner Kennedy: That is, you are talking about the union's case?

Mr. Mouritsen: That is correct.

Trial Examiner Kennedy: I see.

Now, do counsel for the companies have any idea

as to how long it will take them to put in their case?

Mr. Compton: I think it will depend entirely upon the Board's case. I do not think we can even make a guess as to the time.

Trial Examiner Kennedy: All right. We will be in recess for a short time.

(At this point a short recess was taken, after which [27] proceedings were resumed, as follows:)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Cosgrove: If the Examiner please, we have conferred among ourselves and with counsel for the Board, and we submit for your consideration that we should proceed along the lines suggested by the Examiner, and that because the order of consolidation went out pursuant to a suggestion of consolidation by counsel for the Board, who, after study of the local situation thought that the time consumed in the presentation of the evidence would be very considerably shortened and simplified if the matters were considered as separate cases; that during the course of the day, and during the noon recess he might get in touch with the Washington authorities to see if they wished to make any more definite than is contained in the order their intention in that regard, and if they do, that might be called to the attention of the Examiner in the morning and in the meantime we would be proceeding.

Mr. Mouritsen: I would be happy to do that.

Trial Examiner Kennedy: If that is so, then in view of the difference in time—do you intend to call Washington, Mr. Mouritsen?

Mr. Mouritsen: Well, I thought I could outline the situation in a telegram and request that they inform us. [28]

Mr. Mouritsen: At this time, Mr. Examiner, I desire to offer as Board's Exhibit 2 an agreed statement of facts regarding the operations of the Los Angeles Evening Herald and Express Department of Hearst Publications, Inc., so far as they bear upon the jurisdiction of the Board. This stipulation has previously been signed by counsel for Hearst Publications, Inc., Los Angeles Evening Herald and Express Departments and counsel for the Board.

Trial Examiner Kennedy: Any objection?

Mr. Cosgrove: The Times-Mirror Company objects to the receipt of the document in evidence insofar as it has any application, real or contended, to the Times-Mirror Company case. [29]

Mr. Cosgrove: If the Examiner please, to comply with the rule that we assign at the time of the objection, the reason in support of the objection, I will say, as, of course, is apparent to the Examiner, that the document is a stipulation to which the Times-Mirror Company is not a party and does not relate to any transaction in which the Times-Mirror Company has participated. [30]

WILLIAM J. HARRISON

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name is what, please?

The Witness: William J. Harrison.

Mr. Cosgrove: May I interrupt in the matter of economy of time? We are hopeful that as a result of the communication with Washington that we will be relieved of the necessity of making constant objections, Your Honor, and would it be agreeable to the Examiner if instead of objecting to questions as this witness is asked as we go along, having in mind, as we are presently advised, his examination will relate entirely to the Herald and have no reference to the Los Angeles Times, that we defer any objection until the close of his testimony and then make one objection at that time to strike with reference to the Los Angeles Times.

Trial Examiner Kennedy: Well, I have no objection to your motion to strike at any time if it is definite enough so that anyone reading the record will know what you are moving to strike. You can make it at any time during the proceedings, just so you are sufficiently definite as to what you are moving to strike, that is the only requirement that I impose on the motion to strike. Otherwise, I can't give you a ruling on it. [32]

Mr. Crosgrove: The Examiner understands that if questions are asked this witness relating to the

(Testimony of William J. Harrison.)

matter of the relationship between the Herald and their newsboys, that we might at that time object on behalf of the Times, but I think it would be just a rather unjustifiable consumption of time in view of what we hope may be accomplished later in the day, and that we might simply wait until the completion of the evidence. At that time I will comply with the Examiner's suggestion and requirement that the motion be stated at length and made very definite as to its reasons.

Trial Examiner Kennedy: Very well. Proceed.

Mr. Mouritsen: May it be understood, Mr. Compton, that if I refer to the Herald and Express, it is merely a knowingly erroneous reference to the real corporation that is involved, and that is the Hearst Publications, Inc., and for convenience, may I refer to it as the Los Angeles Exening Herald and Express?

Mr. Compton: I will stipulate that it is a convenient designation of the department which I represent, and I will have no objection to it.

Direct Examination

Q. (My Mr. Mouritsen): Where do you reside, Mr. Harrison? A. Residence address?

Q. Residence.

A. 8003 Hollywood Boulevard. [33]

Q. And what is your business or occupation?

A. Circulation manager of the Los Angeles Evening Herald and Express.

(Testimony of William J. Harrison.)

Q. And how long have you occupied that position? A. 28 years and 10 months.

Q. Will you outline briefly what your duties are in that position?

A. Well, to outline them briefly would be a matter of some difficulty. It represents the general supervision of the distribution and sale of the copies printed for such purposes by the Evening Herald and Express. It represents under my direction the mail room, transportation department, circulation employees, in and out of that particular department.

Q. And are you acquainted with the business in which the Herald and Express engages?

A. You mean by that the publishing business?

Q. Yes, as applied to this particular paper.

A. Yes.

Q. Now, can you tell us whether or not the Herald and Express is engaged in the business of circulating copies of the paper which it prints?

A. Yes.

Q. Now, could you outline briefly the various means by which you circulate papers in the city of Los Angeles?

A. The operation begins with the mailing. Papers printed [34] are sent by conveyor, which is a part of the press, an extension of the press, as a matter of fact, to the mail room. There the mailers send the papers out either wrapped to specific addresses or down the chutes to the transportation

(Testimony of William J. Harrison.)

department where many of them are distributed in bulk without address.

Q. Do you have an organization that is commonly known as district men? A. Yes.

Q. Do you have more than one of such organizations? Is that term different as to morning or night district men, in other words?

A. No, that is one organization.

Q. Now, when is the Herald and Express published? I mean during what hours. For example, what hour does it begin and how long does it continue?

A. Well, unless an emergency arises, the fixed hours of publication are 9:00 in the morning to 5:00 in the evening. I refer now to starting time of the presses. But that is the time of the first and final editions.

On occasions when there is extraordinary news, as exists today, for instance, there will be longer running time.

In other words, we will probably complete the press run normally about half past five. It is entirely likely it may be six or six-thirty today. But that only represents extraor- [35] dinary occasions.

Q. Could you tell us briefly the various editions that you publish during the day?

A. The first edition at 9:00 o'clock. Or do you wish the names of those editions?

Q. Would you name them?

A. The first edition at 9:00 o'clock is named the Green Flash. The edition that follows that at 10:30

(Testimony of William J. Harrison.)

is the Latest News edition. At 12:30 approximately—that hour varies a trifle—the Sports Edition. At 2:20—these are approximate hours I am giving you. I wish they were more fixed than they are—they vary a trifle—the Night Edition. At 4:00 o'clock the Night Final, and about 5:00 o'clock—5:00 to 5:15, the 7-Star or Race Extra.

Q. Now you referred, Mr. Harrison, to the fixed hours of the publication of the paper from time to time during the period while you have been circulation manager of the Herald and Express. Have those times been changed?

A. Yes. There has been some change, although I do not recall when, in the editions, due to increased population, traffic conditions, and one thing and another that have developed in the course of these 28 years.

Q. Now, has there been, for example, any change in the hour of the initial publication, that is 9:00 o'clock in the morning? [36]

A. Well, I am not certain as to that. If so, it happened a great many years ago.

Q. Approximately how many district men do you have? A. Well, I think we have 86.

Q. And are their duties in general the same, or do they vary.

A. Their duties are, well, I will say they are the same, yes.

Q. Could you outline briefly just what the duties of the district men are?

(Testimony of William J. Harrison.)

A. The district man's duty is to supervise a certain territory, to collect accounts for sale of papers from the news vendors on the different corners that are in his territory, to accept any regulation of orders that may be tendered to him by those street vendors, increases or decreases, and to recover any vacancy that may occur as from time to time news vendors drop out of that business.

Q. And these people you refer to as news vendors are also commonly known as newsboys, is that correct? A. Yes.

Q. Now, the duties that you have outlined are outlined to the District Manager by yourself; is that correct, or by someone else in authority in the circulation department?

A. Well, a district manager usually comes up from the ranks, and when he finally is promoted to that position he knows the [37] duties, and if he does not know the duties, we would very willingly instruct him in them.

Q. Are there any other supervisors or employees in the circulation department between yourself as circulation manager and the district managers?

A. Yes.

Q. Could you name those people, please?

A. Jake Gratz, A. W. Brewster, R. T. Brewster.

Q. Now, what position do those gentlemen occupy with reference to the—

A. They are what are termed branch managers. To facilitate the distribution of papers, we have

(Testimony of William J. Harrison.)

branches, one in the southwest under the supervision of Mr. Gratz, one in Hollywood under the supervision of Mr. A. W. Brewster, and two or three under the supervision of R. T. Brewster, a part of which are in town, and some of which are out. Out of these branches a redistribution of papers is made, and the branch men in those particular territories are in direct charge of the district men who operate out of those branches.

Q. And those men, that is, Gratz and Brewster, operate under your supervision; is that right?

A. They operate under me, under my supervision.

Trial Examiner Kennedy: Do you use the terms "district man" and "district manager" interchangeably?

The Witness: It covers the same thing.

Trial Examiner Kennedy: The same thing. All right. [38]

Q. (By Mr. Mouritsen): Now, through the period that you have occupied this position with the Herald and Express, you have had some contacts with the news vendors, or newsboys, is that correct?

A. Yes. But if you will pardon me, there was one omission I made in our distribution, and that has to do with downtown streets there. They are under the supervision of Dave Bell, and some district managers are under his direct supervision, and he under mine.

Q. Well, do I understand then that some of the

(Testimony of William J. Harrison.)

downtown district managers are directly under your supervision; is that correct?

A. A few report to the office—three or four, I believe.

Q. And when they report to the office, those men are directly under you? A. Yes.

Q. From time to time during the period while you have been circulation manager of the Herald and Express, have various newsboys taken up complaints, or beefs with you regarding——

A. Yes, sir.

Q. And I presume that has been done on innumerable occasions; is that correct?

A. Well, considering the number employed in that work, the complaints reaching me have been quite limited; but there have been complaints. [39]

Q. Yes. Could you outline a few of those complaints that have been brought to your personal attention and in which you have participated?

A. Well, I do not believe that I can recall at this moment any specific instance.

Q. Could you tell us in general what the nature of such complaints is?

A. It might possibly be that a newsboy would complain that his order had not been reduced, for instance, upon which complaint we would make a prompt investigation, take the matter up with the District Manager or Supervisor, to determine if there was any reason for such complaint.

Q. And upon the basis of your investigation you

(Testimony of William J. Harrison.)

would make some settlement of the complaint, is that correct? A. Yes.

Q. In addition to complaints of that nature, complaints regarding the time when newsboys are to be on the corner have been taken up with you?

A. Well, no, I do not believe that I recall any specific instance of that.

Q. In order to refresh your recollection, Mr. Harrison, I will ask you if you recall having taken up such a matter with Al Schwartz?

A. Very definitely. I am very glad that you asked me that question. [40]

Q. Could you outline very briefly what that matter consisted of?

A. Yes. War had broken out. There was a great demand for papers. Mr. Schwartz was not on his corner. It was an important downtown intersection and we sent some one of the boys, whose name I do not know now—There was always a number of them who were around the office—to cover Mr. Schwartz's corner. Later in the day Mr. Schwartz phoned to know why this boy was on his corner. He was informed that he was on the corner because Mr. Schwartz was not on the corner, and it was impossible under the circumstances to leave a corner of such importance without some representation on it.

Q. And when you state that war had occurred, I will ask you if that was or was not in approximately September of 1939.

(Testimony of William J. Harrison.)

A. Well, I do not recall that. I do remember that our sales were exceptionally heavy that day, and I am not certain as to the date of that.

Q. Do you recall any other instance, Mr. Harrison, of complaints that finally reached your personal attention regarding newsboys or their operations? A. Any specific instances?

Q. Any others of a general nature. You can tell us some of the matters that finally reached your personal attention.

A. Well, perhaps you have something there to refresh my [41] *my* mind. I do not recall it right now.

Q. I first wanted to ascertain——

A. Yes.

Q. ——whether you had any independent recollection. I will ask you if from time to time it has not been brought to your attention, or you have not taken up complaints regarding returns, granting newsboys returns on their papers?

A. Yes.

Q. And has that been taken up on more than one occasion? A. Yes.

Q. Has that been taken up by individual newsboys?

A. That has been taken up largely by a grievance committee representing the newsboys.

Q. And in addition it has been taken up by individual newsboys, is that correct?

A. There may have been instances of that that I do not recall now.

(Testimony of William J. Harrison.)

Q. I will ask you if from time to time during the period while you have been circulation manager, the matter of the price of the paper to the newsboys has not been the subject of complaints brought to your attention.

A. No. I recall no instance where any newsboy ever objected to paying the wholesale price that was asked for.

Q. Mr. Harrison, do you recall the time when the last raise in the price of the papers to the newsboys occurred? [42]

A. Yes. November 1, 1937.

Q. I will ask you if on that occasion, or at or about that time, no complaints were taken up or were brought to your attention either by individual newsboys or by an organization, regarding the price of the paper.

A. No. No complaint about the price of the paper was ever presented to me.

Q. Did you participate in any discussion with any individuals that is, newsboys or with representatives of an organization, regarding that——

A. Price?

Q. Change of price. A. No.

Q. I will ask you if from time to time during the period while you have been circulation manager you have not personally considered complaints of newsboys regarding their separation from the paper, or the fact that they were no longer permitted to sell copies of the Herald and Express?

(Testimony of William J. Harrison.)

A. I do not understand that question, Mr. Mouritsen. Please amplify it.

Q. Well, if I may speak in the matter, have newsboys ever taken up their discharge with you?

A. There have been times when we have refused to further sell our papers to a newsboy.

Q. And that has been taken up? [43]

A. That has been taken up, yes.

Q. And such matters have been taken up by individual newsboys, referring to their discharge or refusal to give them papers? A. Yes.

Q. And on occasions has that also been taken up by yourself with representatives of the labor organizations? A. Yes.

Q. And has that occurred on more than——

A. If by the labor organizations you mean the representatives of the Newsboys' Union, C. I. O. No. 75, yes.

Q. Has that happened on more than one occasion?

A. I think that perhaps on as many as three occasions I have been called by them, or called on by them.

Q. Mr. Harrison, it is a fact, is it not, that the Los Angeles Evening Herald and Express and the News, two different papers are handled largely by one set of newsboys? Do you understand that?

A. Yes; I think that practice obtains quite generally within the city.

Q. Did you participate in any conference or

(Testimony of William J. Harrison.)

conferences at which an arrangement was made whereby the newsboys of the Evening Herald and Express handled also the News?

A. The conference between whom?

Q. Between the representatives of the Stockholders Publish- [44] ing Company, Inc., the publishers of the News, and yourself or other representatives of the Herald and Express?

A. On two occasions, the Record, before it was disposed of to its present owners, which came to be named the News, withdrew from the group of newsboys that was handling both papers at that time, feeling that they would either have better representation or more active selling efforts in their behalf.

Over a period of months prior to November 1, 1937, it had been more or less casually mentioned that perhaps it would not be unwise to again have the same newsboy, if he was willing to do so, sell both papers. When we raised the price on the 1st of November from three to five cents—1937—from three to five cents, the Daily News at approximately the same time increased their street sales price from two to three cents. It was an- [45] ticipated by both papers that the result of such an increase in price would result in a sharp loss in circulation, thereby impairing the profits of the boys who sold newspapers. We felt, however, that if they sold both papers the profits from the two added together with the increased profit that they were making by reason of this price, would more than

(Testimony of William J. Harrison.)

compensate them for any such loss that might fall upon them. Prior to this time our wholesale price to the newsboys had been 2 cents a copy, they making a profit of one. At that time they were charged 3 cents for a copy and they profited two. [46]

After Recess

(Whereupon, the hearing was resumed, pursuant to recess; at 1:30 o'clock p. m.) [48]

Mr. Mouritsen: I will be prepared, Mr. Examiner, to offer the brief statement of facts or stipulation that is Board's Exhibit 2 for identification, with the understanding that it will be binding only on the Los Angeles Evening Herald and Express Department of Hearst Publications, Inc.

Trial Examiner Kennedy: With that limitation of the offer, is there any objection on the part of other parties?

Mr. L. B. Binford: Stockholders Publishing Company, Inc., accepts the stipulation and withdraws its objection interposed this morning.

Mr. Cosgrove: The Los Angeles Times will withdraw the objection, your Honor, in view of the stipulation.

Mr. Hall: The Los Angeles Examiner does the same.

Trial Examiner Kennedy: Received in evidence and leave granted to amend, and at the time the proposed amendment is offered, if there are any further objections, we will consider them as to the proposed amendment only.

(Testimony of William J. Harrison.)

(Thereupon, the document above referred to was received in evidence and marked as Board's Exhibit No. 2.) [49]

[Exhibit No. 2 is set out at page 49 of this printed record.]

Q. (By Mr. Mouritsen) Mr. Harrison, I believe before the noon recess, we were discussing the arrangement whereby the newsboys handled both the Herald and Express and the News.

Now, did you attend any conferences at which were present representatives of the Herald and Express and the News, whereby this arrangement was worked out?

A. I attended conferences that had to do with a number of other matters of common interest, in which this was more or less casually brought up.

Q. Now, could you tell us when the first of such conferences took place?

A. No, I cannot do that.

Q. Could you give us the approximate date or period wherein it was held?

A. Oh, I would say probably some six months prior to November 1, 1937.

Q. And other than yourself, who participated in such conferences?

A. Well, I believe that I remember on one occasion Mr. Keeler was present.

Q. Mr. Keeler is the business manager of the Los Angeles [50] Evening Herald and Express?

(Testimony of William J. Harrison.)

A. Yes.

Q. And from the News, or the Stockholders Publishing Company, Inc., the publisher of the News——

A. (Interrupting) Mr. Smith may have been present. I think Mr. Robare, who was at that time circulation manager of the News, was also present.

Q. And who else, if you recall?

A. None that I recall, Mr. Mouritsen, although I am sure that more were there.

Q. Where did this conference take place?

A. The one that I attended was in the offices of the Evening Herald and Express, the business manager's office.

Q. Now, will you please state what was said and done at that conference with reference to any future arrangement whereby the Herald and Express and the News were to be handled by one newsboy?

A. Well, Mr. Mouritsen, I cannot give you the words that were used. I can only give you the sense of that meeting.

Q. Would you please do so?

A. As I remarked before, both papers anticipated a sharp loss in circulation. We felt that it would be an opportune time to permit these boys who wished to handle both papers to do so, that the additional profit by reason of the increased retail price of the Herald, plus the profit through

(Testimony of William J. Harrison.)

the sale [51] of the News, would more than compensate them for any loss of circulation which we might have by reason of the increased price. We suffered such a loss, speaking now for the Herald and Express only.

Q. Well, I think we can develop it chronologically, Mr. Harrison, to get the facts.

First I desire to go into these conferences and find out how these arrangements were made. Is that approximately all the discussion that took place at this first conference some six months prior to November 1, 1937?

A. No. I think at that conference the matter was mentioned casually.

Q. Now, after that time, were subsequent conferences held, at which the subject matter of the consolidation was discussed?

A. It probably came up from time to time at every meeting. I wasn't present at many of them.

Q. Were you present at any such meeting at which it was finally determined that the consolidation was to take place?

A. Yes. It was understood that the best time to bring this into effect would be on November 1, 1937.

Q. And that determination was made at one of these meetings between representatives of the Herald and Express and the News, or the Stockholders Publishing Company, Inc.?

A. Yes. [52]

Q. Now, could you give us the approximate date

(Testimony of William J. Harrison.)

of the final conference at which you were present, whereby the consolidation was determined to be put into effect?

A. No, I couldn't, Mr. Mouritsen. Frequently I would be called up from my office to attend some such meeting that was in progress, and after a brief time there, would return to my duties. There was nothing to impress the date upon my mind, only approximately.

Q. Well, where was this final conference held?

A. My impression is that it was held in the office of the business manager of the Evening Herald and Express.

Q. That is Mr. Keeler's office?

A. Mr. Keeler's office.

Q. And is that in the building where the Los Angeles Evening Herald and Express is published?

A. Yes.

Q. Who were present other than Mr. Keeler and yourself?

A. I am not certain but I think that Mr. Smith was present and Mr. Robare, the circulation manager at the time, of the News.

Q. Now, will you tell us what was said at this final meeting regarding the consolidation?

A. No, I cannot, Mr. Mouritsen. I can only tell you the result of it. I do not remember exactly what I said or what anybody else said. [53]

Q. Can you give us in general the gist of what you said?

(Testimony of William J. Harrison.)

A. In general, my sense of the affair was this, that we ought to have the boys, if they were willing to do so, sell both papers, because of the additional profit that would accrue to them by such an arrangement.

Q. Let me ask you this:

Did you have in mind at that time primarily the benefits to accrue to the newsboys or was it a business arrangement that was being made by the Evening Herald and Express and the Stockholders Publishing Company, Inc.?

A. Why, it was a mutual—an arrangement for mutual benefit. While it benefitted us, it benefitted the newsboys.

Q. Now, can you give us the gist of what Mr. Smith said at this final conference?

A. Nothing more or less than he was of the same general opinion.

Q. And did Mr. Robare say anything at this conference?

A. Nothing but in general accord with it.

Q. Now, at this final conference, where the consolidation was discussed, were plans discussed whereby the consolidation would be put into effect?

A. You mean when or how?

Q. Both.

A. It was to be put into effect on the 1st of November, 1937.

Q. And was it discussed how the plan was to be put into [54] effect?

(Testimony of William J. Harrison.)

A. Nothing more nor less than that notice should be given to the boys that they could sell both papers.

Q. And how was the—was the method whereby the boys were to be informed of this consolidation discussed at this meeting?

A. I notified a downtown group of these newsboys in my office that we were going to raise the price of the paper on the 1st of November. The wholesale price to them would be 3 cents, they making a profit of 2 cents, where they had been paying 2 cents and making a profit of 1 cent; and that they also would be able to handle the Daily News.

Q. You deal with the downtown newsboys through Davy Bell ordinarily; is that correct?

A. Yes.

Q. Now, what arrangements were made for the notification of the newsboys in the districts other than the downtown district?

A. First to the branch managers and through them to the district managers, and through the district managers to the newsboys.

Q. You instructed, in other words, Mr. Gratz and Mr. Brewster that the change was to be made in the price; is that correct?

A. That is right.

Q. And did you at that time instruct them that they were in [55] turn to instruct the District Managers under them to that effect, namely, regarding the change in price? A. Yes.

(Testimony of William J. Harrison.)

Q. And the District Managers were in turn to instruct the newsboys; is that correct?

A. That is true.

Q. Now, with reference to the consolidation, that is, the handling of both papers by one newsboy, how was that instruction or notification to be made, if you will outline that, please?

A. In the beginning, Mr. Mouritsen, there was no instruction given as to how they should handle the papers or display them. They were merely notified they could handle both papers.

Through failure to make such an arrangement, some friction arose and within a week Mr. Robare came to my office and suggested that we should agree upon some fair method of display for both papers, and it was understood that it would be well to have the News folded on the outside of the Herald. [56] That gave them outside display, because when the paper was folded smaller than the Herald, the Herald would conceal it. Had the News been fully opened, that would have completely concealed the Herald. Had the Herald, on the other hand, been on the outside of the News and the News on the inside, no one would have been able to see the News, so this appeared to be a fair arrangement and we asked the newsboys in general to cooperate with us to that end.

Q. That is, this method of display that you and Mr. Robare discussed? A. Yes.

Q. And that was shortly after the consolidation, or after November 1, 1937, is that correct?

(Testimony of William J. Harrison.)

A. Yes, within a week or so.

Q. Now, how was this manner of displaying the News and Herald and Express, respectively, how was notice of that given to the various newsboys?

A. To the branch manager and through him to the district manager and through the district manager to the newsboys.

Q. And after that time have you on occasion had any conference or any meetings with district managers which took up this matter of displaying the Herald and Express and the News, respectively?

A. Only where instances of complaint would arise.

Q. Will you explain what the nature of the complaints was? [57]

A. Complaints from the Daily News.

Q. And of what nature were they?

A. That the boys were not giving them outside display, in many instances inside display.

Q. And after you received such complaints, will you tell us what action you took in that regard?

A. I notified the branch managers to instruct his district managers to talk with the newsboys, telling them that that was not fair, not in accordance with the understanding, and to give the News their outside display.

Q. Well, you instructed them to talk to the newsboys regarding that? That is correct?

A. That is correct.

Q. Now, at the time when this consolidation took

(Testimony of William J. Harrison.)

place on November 1, 1937, do you know what the result was with reference to the newsboys who were thereby eliminated, and by that I mean were Herald and Express newsboys eliminated in the main, or were the News newsboys eliminated thereby?

A. I think that more boys on the News were eliminated. Our organization was more stabilized. Our news vendors group was more stabilized than that of the News. The corners were more profitable, sales being larger, and for the most part the sale of the Daily News was turned over to the Herald and Express newsboy, but not wholly so.

Q. Now, if we may return to the manner in which notification [58] of this consolidation was given, was that given in the same manner as these other items you have mentioned, namely, that you notified the branch managers and instructed them to notify the district managers and they in turn were to notify the newsboys? A. Yes.

Q. And in this conference that you held of downtown newsboys, that matter was also taken up, is that correct?

A. Just what matter is that, Mr. Mouritsen?

Q. I am speaking of the consolidation of the Herald and Express and the News in the person of one newsboy.

A. Well, there were a group of newsboys called into my office a day or so prior to this, this common price raise, and notified of the price raise and

(Testimony of William J. Harrison.)

that they would be permitted to sell the Daily News.

Q. Now, directing your attention, Mr. Harrison, again to this discussion you had with Al Schwartz regarding the hours during which you desired representation on his corner, will you tell us briefly just what that discussion or conference consisted of?

A. Mr. Schwartz phoned about 1:00 o'clock or a little thereafter to know why someone was on his corner. I told him because he wasn't on the corner, that a surprisingly large story, the outbreak of war, had occurred and that his corner was without representation and we sent someone down there to [59] cover it, and I asked him why he wasn't there. "Well," he said, "I go to work at 1:00 o'clock."

And I said "War has broken out."

"Well," he said, "war or no war, 1:00 o'clock is the time that I go to work."

Q. Tell us what else occurred?

A. He then asked why he wasn't notified. I asked him if he thought it was my business to call up every newsboy in the city and notify them when a story came out. He said he thought it was.

Q. And what further occurred?

A. Later on he came to the office again accompanied by the secretary of the Newsboys Union, whose name for the moment escapes me.

Q. Perhaps Art Page?

A. Art Page, yes. And they too discussed the

(Testimony of William J. Harrison.)

matter covering the same ground that I had covered with Al Schwartz over the phone and alone, and Al Schwartz again made the statement that it was my business to notify all the newsboys whenever a story of unusual interest occurred. And I then asked him if he had any idea of how many newsboys there were in the city, how many had phones, if they had phones, and if he thought it was entirely feasible to do that; that in as much as all the newsboys were entirely well aware of all the times that we went to press, the edition schedules and the territory [60] was well covered, there could be no excuse for his having neglected to cover his own corner.

Q. Well, is that about all you can recall that was said at that time?

A. Substantially, yes.

Q. And after that time, did Al Schwartz continue to appear on the corner at one P. M.?

A. At one P. M. and later.

Q. Did you at that time request that he appear at 9:30?

A. I did not, Mr. Mouritsen. Mr. Schwartz said "What time am I to be on my corner tomorrow"? the following day.

I said "You know when we go to press. Come on the corner when you please, but we are starting to print papers at 9:00 o'clock."

Q. Is it or is it not a fact that after that time Mr. Schwartz appeared at 11:00 o'clock in. the morning—11:00 A. M.?

(Testimony of William J. Harrison.)

A. I would not know that, Mr. Mouritsen. Perhaps Mr. Bell would. But I have no means of knowing when these newsboys appear on their corner.

Q. Now, Mr. Harrison, I believe you have certain newsboys who receive checks from the Herald and Express; is that correct?

A. That is not correct. We have newsboys who are wholesalers, and who, for their wholesale duties, receive a check, [61] but not to sell newspapers.

Q. Do you recall when the practice of giving certain of these boys who act as wholesalers checks arose?

A. Well, that has developed over a period of years, Mr. Mouritsen, a matter of slow development.

Q. Beginning approximately what time?

A. Well, some time after 1914, I should say, some time after 1918. That was done to expedite our work, enabling the district manager to cover his territory faster, because this wholesaler would check in a group of boys at his corner and our district manager, not having to contact every one of them, would contact only one.

Q. Well, can you outline briefly the duties that one of these boys performed for which he received a check from the Herald and Express?

A. I think, Mr. Mouritsen, that Mr. Bell, Mr. Gratz or Mr. Brewster, who are in more direct

(Testimony of William J. Harrison.)

contact than I am, could define their duties a little bit better than I could. Understand, my department is largely a department of outside people, with whom I can have no intimate contact, because they do not work all under the same route.

Q. Well, during the process of your testimony you have referred to representation of the Herald-Express. What do you mean by the use of that term?

A. That is the display of the newspaper that a boy sells. [62] If a boy sells only one newspaper, that of course is representation for that newspaper; if he sells two newspapers, and both papers are visible, that is representation for the two. Representation is a form of display. We can go a little further with it and say that if we open up a new corner, for instance, Mr. Mouritsen, on which we have had no previous sales, we then have representation on that corner.

Q. Now, Mr. Harrison, can you tell us who determines the price at which the paper is sold to the public?

A. That is an advertised price, carried on the masthead of the paper. The public is fully acquainted with the price as well as the newsboys. I have known instances where they have sold the papers for 25 cents apiece.

Q. Do you give your district managers any instructions with reference to which the paper is to be sold?

(Testimony of William J. Harrison.)

A. Wholesale or retail?

Q. Both.

A. Our established wholesale price is determined by the Company; the retail price is an advertised price, with which the public is acquainted, and unless there is something sensational and a shortage in papers, that is the price and the only price, that the public will pay.

Q. Do you make any effort to see that the public receives the papers at the established price?

A. Mr. Mouritsen, I have never in all my experience had [63] anything like that arise.

Q. What do you mean by that?

A. I mean that it was not necessary to either instruct the newsboy or the public what the retail price of the paper was.

Q. Mr. Harrison, I understand from your prior testimony that the paper publishes a number of different editions during the day?

A. That is true.

Q. Now, with reference to the time when such editions are to be sold, have you ever given the district man any instructions regarding the sales of a prior edition after a later edition has appeared on the street? Do you understand that?

A. Why, a prior edition after a later edition appears on the street is unsalable.

Q. Is it your statement or your testimony, Mr. Harrison, that it is impossible to sell an earlier edition of the paper after a subsequent edition has appeared?

(Testimony of William J. Harrison.)

A. It occasionally happens, Mr. Mouritsen, that a newsboy may take advantage of a buyer and work off an earlier edition on him. By no instructions of our own. We would much prefer to have them sell the latest edition that is out.

Q. And what action, if any, would you take, if you ascertained that fact or that situation? That is, that a newsboy was selling an earlier edition after the later one appeared? [64]

A. He would be advised that he should sell a later edition when he had it, but if he had sold out on that later edition, Mr. Mouritsen, and had earlier editions left, we would certainly expect him to dispose of those.

Q. And you would so advise him if that were the situation?

A. Yes. And I may add that he would not need the advice.

Q. Now, Mr. Harrison, these district men, how many days a week do they work at present?

A. Six.

Q. And the paper, of course, is printed only on six days a week?

A. No Sunday issue.

Q. Has it been your experience in the past that from time to time these district managers take vacations, take time off?

A. They are given vacations, Mr. Mouritsen, every year.

Q. And during the time while they are off, I

(Testimony of William J. Harrison.)

presume that relief men are put on by the paper; is that correct?

A. In some instances. In some instances territory is doubled and one district man will do the other one's work while on vacation, and so on.

Q. And I suppose that from time to time during the period while you have been Circulation Manager that various of these district managers have become ill? A. Yes. [65]

Q. And it has been necessary to replace them at least temporarily by another man?

A. That is true.

Q. Now, what provision does the Herald-Express make for assuring that there shall be continuous service in the event that one becomes ill, that is, if a district manager becomes ill or takes a vacation?

A. Substitutes are available.

Q. And, as a matter of practice, do you or do you not request the District Manager to keep and turn in to the Company a route sheet showing the places where he leaves papers, and the approximate number that he leaves?

A. Not to our office, no.

Q. And where, if to anyone, are such route sheets turned in?

A. They will be turned in to the branches out of which those district men would operate.

Q. All right.

Now, what is the situation with reference to the

(Testimony of William J. Harrison.)

downtown area? That is Davy Bell's area.

A. Downtown the boys as I understand it—perhaps Mr. Bell can give it a little more, clear it up for you a little better than I can—have a normal order which they add to or take from as they please. We estimate their normal sales to be such and such an amount by past experience on each edition. Now, those papers are sent out to them by trucks. A district manager goes on the truck and puts off on each one of these cor- [66] ners the required number of papers. Then later on another truck will come along with a re-cover. They will only perhaps get a part of their order on the first delivery; then a re-cover will follow them distributing additional supply up to their order. And after that the truck will come again so they can get additional papers if they need them. And it sometimes occurs that they will phone in they need more papers, in which event we send them to them.

Q. Well, are there any district managers who work under Davey Bell? A. Yes.

Q. Who are they?

A. Well, there is Joe Woods, Don, Sollie Epstein, Charley Williams is the asistant superintendent and is rarely on the street. One or two others whose names I do not recall right now. Mike Amstell is one of them.

Q. Then Joe Woods and these other district men whom you have named are not required to turn in a route list to you; is that correct?

(Testimony of William J. Harrison.)

A. No, not to me.

Q. And if they turn such a list in to Davey Bell, it is not to your knowledge; is that correct?

A. I think they turn in some form of an order card, which is made out in memorandum form, so many to this corner, so many to that, and so many to the other corner. The papers out of [67] the mail room are charged against the street sales department, so many on each edition, so that the total for the day is receipted for by the superintendent of street sales, signing this slip as a receipt to the mail room for the number of papers that are indicated thereon for each edition; it is a bulk transaction from the office point of view, and not separated into its component parts for each corner.

Q. Is it true, then, to your knowledge, that no such breakdown is turned in to Mr. Bell, and that shows the number of papers that are given to these various spots and corners in the downtown area?

A. I think Mr. Bell does know the number that go for a normal order on each of the downtown corners, or to the wholesalers that appeared on a number of these corners, and who redistribute or resell without profit to themselves, but at the same price they pay to the boys who come there and get these papers.

Q. Well, I am trying to ascertain, Mr. Harrison, if the record is kept by the paper under your supervision that indicates the places where district managers leave papers and the approximate number of papers that they leave at said places?

(Testimony of William J. Harrison.)

A. No; not any office record of our own.

Q. Now, do you have any employee of the Los Angeles Examiner in the circulation department——

Mr. Hall (Interrupting): Did you say Los Angeles Examiner?. [68]

Mr. Mouritsen: If I did, I did not mean to do so and I desire to change it to the Los Angeles Herald and Express.

Mr. Hall: I think you did it in another question, Mr. Mouritsen. It was entirely inadvertent, I assumed.

Mr. Mouritsen: Yes. It should appear all through this examination that it is being conducted with reference to the Los Angeles Evening Herald-Express.

Q. Do you have in the circulation department of the Los Angeles Herald-Express certain checkers or spotters?

A. We have no spotters, Mr. Mouritsen, in the circulation department of the Evening Herald-Express.

Q. How about checkers?

A. We have checkers who check the district men and do not check the newsboys, but the district men.

Q. Very well.

Now will you explain just what you mean by saying that these checkers check the district men?

A. They go from place to place. Perhaps in

(Testimony of William J. Harrison.)

one part of the town this evening and another part tomorrow. They observe the general conditions, and when they appear to find something that the district manager should know about, they merely make a memorandum of it. I pass it along to the branch manager. If it happens to be in his territory, he in turn will call the attention of the district manager to the fact the conditions are thus and thus on such and such a corner. These checkers are not supposed to discuss anything or talk with or give any [69] orders whatever to newsboys.

Q. And those checkers report directly to you as head of the circulation department, is that correct?

A. They turn in any memoranda that they happen to find that needs any attention, and I pass it along to the interested person.

Q. Are certain checkers also under the supervision of and reporting directly to these various branch managers whom you named? A. No.

Q. They all report directly to you?

A. Yes. But that does not mean, Mr. Mouritsen, that they do not see the branch manager or talk to the branch manager, but their reports are made to me.

Q. Now, you have stated that they are supposed to observe general conditions; I suppose that is general conditions regarding the circulation of the paper?

A. The circulation, yes, the revision of the territory, and whether or not the district manager

(Testimony of William J. Harrison.)

appears to be neglecting a part of his territory or all of it or none of it.

Q. And could you tell us just what these general conditions consist of? I mean, what is a checker supposed to observe and report to you, if he finds anything amiss?

A. Well, for instance he will report that the papers are laid on a certain corner, due at a certain time and they [70] arrive later than that time. He may also report the time that the Daily News of a similar edition arrived at that place. On a later edition, the last edition of the day, he will report the time that our papers reached some parts of the territory and the time that the Times and Examiner reached those places, with their first edition in the evening.

Q. Yes. That is one point that they check on.

Now, can you name the other points on which they are to check?

A. Well, I know of no other points, Mr. Mouritsen.

Q. Approximately how many of these checkers are there? A. Two.

Q. And that is the only thing that they are to observe and to report to you on, is that correct?

A. Yes.

Q. Who are those two checkers?

A. M. R. Harrison is one, James Blake another.

Q. And any of those memoranda that they send to you regarding the general conditions upon which they are to check, are they retained by you?

(Testimony of William J. Harrison.)

A. No.

Q. What——

A. (Interrupting) No. Memoranda on their reports that requires attention I merely make a memorandum of it and throw the report away. It is of no value. [71]

Q. Or you pass it on to the district——

A. (Interrupting) Or send it out to the branch who in turn would take it up doubtless with the district manager on whose territory the complaint, if any, occurred.

Q. (By Mr. Mouritsen) From time to time during the period while you have been head of the circulation department, the Evening Herald-Express has issued extra editions of the paper which do not come out during the hours from 9:00 o'clock until 5:00 or 5:30, is that correct? A. Yes.

Q. And for example on various election days the paper has appeared prior to 9:00 o'clock, is that correct?

A. That is true. And on New Year's Day regularly.

Q. And on various occasions when there have been championship boxing matches in the east it has appeared later than the 5:00 or 5:30 that is issued? A. That is true.

Q. Now, on such occasion how is notification given to the newsboys regarding this change in your regular time of operation?

A. An extra that we expect, as for an instance

(Testimony of William J. Harrison.)

an early [72] start following an election day, boys are notified through their district managers of the time that we are going to start the following morning. On prize fight extras, which we no longer issue, because they are not quite as salable as they once were, and I think it has been three or four years since we put out championship prize fight extras.

Q. What is done in that event?

A. In that event, knowing the date, knowing the time that the fight would start, the boys were all notified that we would publish an extra as soon as the fight was over.

Q. And that notification was made through the district manager, isn't that correct?

A. Through the district manager and through publication of the fact that we were going to publish such an extra in the paper. [73]

Q. (By Mr. Mouritsen) The Express was formerly a separate paper, is that correct?

A. Yes.

Q. And it consolidated with the then Evening Herald, is that correct?

A. When you say consolidated, just what do you mean, Mr. Mouritsen?

Q. Well, I observe that the name of the paper by which you are now employed is the Los Angeles Evening Herald and Express?

A. And you want to know the date that that was merged?

(Testimony of William J. Harrison.)

Q. Yes, that is correct. [75]

A. That was merged on the 9th day of December—I would say the 10th day of December, 1931.

Q. And this incident that you enumerated whereby the Express and the Herald were handled by different boys took place prior to that time, prior to 1931?

A. Yes, years before that.

Q. At any period during the last five or six years, has there been any time during which most of the newsboys who sell the Herald and Express have received checks?

A. You mean most of the newsboys?

Q. Yes. A. No.

Q. Has there been any time in the last five or six years during which a greater part of them received checks than at the present time?

A. Well, I hesitate on that answer. I am not quite sure of that, Mr. Mouritsen, but I believe that there are fewer now because of the additional profits than at any time in recent years.

Q. May I ask you if approximately at the beginning of 1936 there was not a substantial reduction made in the number of newsboys who received checks from the Los Angeles Evening Herald and Express? A. Prior to what date?

Q. At or about the beginning of 1936 [76]

Mr. Compton: If the Examiner please, I would like to interrupt a moment to inquire whether or

(Testimony of William J. Harrison.)

not the witness and Mr. Mouritsen are talking about the same thing.

I assume that you are talking about these so-called wholesalers concerning which Mr. Harrison testified this morning?

Mr. Mouritsen: No, Mr. Compton. The question is addressed primarily to the fact whether or not at that time there were a larger number of newsboys who received checks than at the present time, and if at that time a substantial reduction was made in the number of newsboys who received checks.

Mr. Compton: As I understood Mr. Harrison's testimony this morning, there was no newsboy, as such, that received checks from the Herald, and the only persons who received checks were newsboys who received checks for working for the Herald in wholesaling papers. Now, did you understand, Mr. Harrison, what he asked you?

The Witness: I understood that I was discussing the same group of newsboys, wholesalers who sell papers and receive checks.

Q. (By Mr. Mouritsen) Were there any number of such newsboys—any substantial reduction that took place at or about the beginning of 1936?

A. Mr. Mouritsen, the occupation of a newsboy is a very fluctuating one. They come and go. They are here today and many of them are gone tomorrow. Now, you ask me in this vast [77] personnel of newsboys since 1936 if I can determine whether some of them got checks then, or more then than get checks now. I do not know.

(Testimony of William J. Harrison.)

Q. You recall no definite curtailment on the part of the management at or about that time, that is, the beginning of 1936? A. No, I do not.

Mr. Mouritsen: I think that is all, Mr. Harrison.

Mr. Compton: Just one moment, Mr. Harrison.

Cross Examination

Q. (By Mr. Compton) In the period stated by Mr. Mouritsen, that is to say, in the last five or six years, do you know of any instance where so-called newsboys received checks from the Los Angeles Evening Herald and Express except and unless those newsboys performed the function of wholesalers?

A. I do not recall any, Mr. Compton.

Q. And do any newsboys now receive checks except and unless they perform functions as wholesalers for the Los Angeles Evening Herald and Express? A. Not to my knowledge. [78]

Mr. Cosgrove: Before the witness is sworn, if the Court please, for the record the Los Angeles Times or the Times Mirror Company desires at this time to move to strike all of the evidence on direct and cross examination of the witness William J. Harrison in the Los Angeles Times case only, that is, Case No. XXI-R-1062.

The purpose of the motion is not at all to strike the testimony or any part of it from the record for

all purposes, counsel appreciating that it has application to other matters now before the Examiner, but on behalf of the Los Angeles Times alone and as to it, the motion to strike is made on the ground that the testimony and no part of it has any reference to any newsboy selling the Los Angeles Times, either at the present time or at any time in the past, and has no relation to any transaction between the Los Angeles Times and any newsboy selling the Los Angeles Times.

At this time, if the Court would be interested in having us say so, I think it would be quite proper for the Examiner to take the motion under advisement to see what develops later on in the proceeding.

Trial Examiner Kennedy: Any objection to the motion to strike? [79]

Mr. Mouritsen: Mr. Examiner, at this time and for the purposes of the record, I will oppose the motion, the granting of the motion, because of the fact, as pointed out by the Examiner, that the order of consolidation does not specify that it is for the purposes of hearing only, and until we receive perhaps some clarification of that I feel that I should oppose the motion as counsel has made it.

Trial Examiner Kennedy: I will deny the motion. I am inviting your attention to the preliminary statement that I have put into the record in which the Board has instructed Trial Examiners to inquire into the past and present history of units used by the employer or by the industry in an em-

ployer relationship, and for that reason, if for no other, it appears to me that it is pertinent as to all parties now in this proceeding.

DAVE BELL

called as a witness by and on behalf of the Petitioner, being first duly sworn, was examined and testified as follows: [80]

Q. (By Mr. Mouritsen) Where do you reside, Mr. Bell?

A. 414 South New Hampshire.

Q. In the City of Los Angeles?

A. Yes, sir.

Q. And what is your business or occupation?

A. Superintendent of street sales.

Q. For the Los Angeles Evening Herald-Express? A. Yes, sir.

Q. How long have you held that position?

A. I have been working, oh, I would say about twenty years. I worked there twenty-nine years all together; I have had that job about twenty.

Q. During that time you have worked under Mr. Harrison, is that correct? A. Yes, sir.

Q. Do you at present have any district managers who work under your supervision?

A. A few, yes, sir.

Q. Will you name them, please

A. Joe Woods, Robert Ritter, Mike Amsdell, Don Paluser or Palazzi—I don't know just exactly how he pronounces his last name.

Mr. Eley: Pazola.

(Testimony of Dave Bell.)

The Witness: Frank Crosson, Sollie Epstein. That is just [81] about all of them.

Q. And briefly, of what do your duties consist in the position you now hold?

A. Put out the papers, see that the district renders—collect for them. I am responsible for the money. Turn in the money the next morning for the papers, previous day's papers.

Q. Would it be correct to say that you have general supervision of the circulation of the Los Angeles Evening Herald and Express in the downtown area of Los Angeles?

A. I guess that would be it, yes, sir.

Q. And these district men that you have named work under your supervision? A. Yes, sir.

Q. Can you tell us briefly what duties a district man performs under your supervision?

A. Goes out and puts out the papers, collects for them, goes over to see that they have enough papers, and so on, the same as any district man in any other district, only he don't have as much territory to cover.

Q. Mr. Bell, I believe in the downtown area you have a number of employees who are known as check men, or wholesalers; is that correct?

A. Wholesalers, yes, sir.

Q. Can you tell us what duties these employees perform? [82]

A. They supply the other corners, and if there is an office building, supply them with papers and collect for them.

(Testimony of Dave Bell.)

Q. When such a man is engaged by the Los Angeles Evening Herald-Express, by whom is he engaged for that work

A. I don't quite get that. What——

Q. (Interrupting) Who hires him?

A. Hires him? I hire him.

Q. Let us presume that during the twenty years that you have been connected with the circulation department of the Los Angeles Evening Herald-Express you have hired a number of such checkmen or wholesalers; is that correct?

A. Yes, sir.

Q. Will you tell us what instructions you give such employees when you hire them?

A. I don't necessarily give them any particular instructions outside of to see that they have enough papers and collect for them. Most of them know just like anybody else—like anybody else that is selling papers, they know what their duties are, most of them, without even having to tell them. No particular instructions outside of the matter of advice if they don't have enough papers to call up for them and collect for them; that is all. [83]

Q. (By Mr. Mouritsen): Well, Mr. Bell, is it your testimony, then, that these check men are given no particular instructions regarding their duties they are to perform for the Los Angeles Evening Herald-Express at the time they are engaged?

A. I give them word I will supply them with

(Testimony of Dave Bell.)

the papers and collect for them on the other corners.

Mr. L. B. Binford: Due to the fact there has been some testimony introduced with respect to the employment of so-called checkers, and these men now that you are referring to as check men, am I to understand that the check men and the checkers have any relationship with each other, or is the true designation of these men wholesalers that you refer to as check men?

Mr. Mouritsen: I could state in regard to that, Mr. Examiner, that checkers and check men are not synonymous terms; that my source of information from the newsboys, namely, that their designation, and the common designation of these men who receive checks from the various papers is that of check men, and I understand that check man and wholesaler by the paper is a synonymous term.

In other words, when I use the expression "check man," I am referring to the men who are known to the newsboys as [84] check men, and to the papers evidently as wholesalers.

The Witness: We use the terms both. The term is wholesalers. They are known to the newsboys and to us both the same as a wholesaler. That is what they are classed as.

Mr. Mouritsen: Is the use of the term "check man" something——

The Witness: That is something somebody else originated. Any newsboy knows it is termed as a

(Testimony of Dave Bell.)

wholesaler, and also it is known by the office and by the newsboys as a wholesaler. I don't know who gave them that title of check men.

Trial Examiner Kennedy: What does "check man" mean to you?

The Witness: I haven't the slightest idea myself.

Q. (By Mr. Mouritsen): There are a number of newsboys who are known as "main spot boys"; is that correct?

A. That is the same thing as wholesalers.

Q. And that is the term that you use and understand; is that correct? A. Yes, sir.

Q. Main spot.

And also "off spot boy," can you tell us what an off spot boy is?

A. Nothing more than any other kid that sells papers on [85] the corner.

Q. Do you understand there is a distinction between a main spot and an off spot boy?

A. The only difference is where he comes and gets the papers from the man on the corner who is responsible for the papers. He just comes over there and gets the papers. That is the term they use.

Q. The main spot boy is the boy who gets the papers from the district man; is that correct?

A. From the truck.

Q. And the off spot boy in turn gets his papers from the main spot boy rather than from the district man; is that correct? A. Yes, sir.

(Testimony of Dave Bell.)

Trial Examiner Kennedy: You said something about getting them from the truck.

The Witness: That is where the truck drops them, on that particular corner; they drop on one corner and they all come over and get them from the boy on that particular corner.

Trial Examiner Kennedy: What about the district man; is he in on that?

The Witness: They come around afterwards and collect from the main fellow.

Q. (By Mr. Mouritsen): When you refer to a truck, what, or whose truck do you refer to?

A. The Evening Herald-Express truck that delivers the papers. [86]

Q. During the period while you have been connected with the circulation department, have the newsboys obtained any spots to sell papers from you directly?

A. There have been some cases, yes.

Q. And have you given such newsboys any instructions at the time when they obtained the corner from you?

A. What instructions are you referring to?

Q. Well, could you give us—state briefly what has been your practice when a newsboy comes to you and applies for a spot to sell papers?

A. Well, the practice is so seldom that we have any openings, we take their application and if we have to have any, which is a rare thing—it has been so long since we have had any I have forgot

(Testimony of Dave Bell.)

the last time it was; that is, in the downtown district.

Q. From whom do newsboys ordinarily obtain spots or corners in the downtown area? From you or from the district manager?

A. Well, if the district manager has got an opening, they obtain it from him. I send them to him and he puts them on the corner if he has got an opening. [87]

Q. From time to time, you furnish to the district men under your supervision advertising placards of the Los Angeles Evening Herald-Express? [88]

A. Yes, sir; we have at different times.

Q. And do you give the District Managers any instructions with reference to those advertising placards?

A. Just take them out and display them.

Q. And any further instructions?

A. No, sir.

Q. Do you make any effort to ascertain whether such instructions are carried out?

A. No, sir.

Q. And what, if any, instructions do you give regarding the distribution of papers—do you give to the district men under your supervision?

The Witness: No special instructions at all.

Q. (By Mr. Mouritsen): And do you make any effort to check up on the proper distribution of papers within the area over which you have supervision? A. Yes, sir.

(Testimony of Dave Bell.)

Q. And what form does that check take?

A. Walking around, going around in the car, looking over things to see what they are doing, to see if they have got enough papers. [89]

Q. Do you do that personally?

A. Personally. Sometimes I send out my assistants, or one of my night men.

Q. During the course of such checks, have you ever found that a newsboy was not on the corner in the downtown area? A. A lot of times.

Q. When you discover such a situation what has it been your practice to do?

A. Just ask them where they have been so long, why didn't they stay on their corner, and why didn't they look after their business.

Q. Do you take it up personally with the newsboys?

A. Sometimes. Sometimes I send one of my assistants down.

Q. And during any such checks, have you ascertained that newsboys are not displaying the papers properly? A. No, sir.

Q. You have never ascertained that during one of your checks? A. No, sir.

Q. And the papers have always been displayed satisfactorily to you on any of these checks which you have made? A. Yes, sir.

Q. Now, during this period while you have been connected with the circulation department, have you on occasion, or have newsboys on occasions taken up complaints with you?

(Testimony of Dave Bell.)

A. Sometimes. Sometimes; very rare. [90]

Q. And during the time that they have—or on the occasions when they have taken up such complaints, what was the nature of the complaints they have taken up with you?

A. The newspapers were late, or why they haven't got the papers, or sometimes the district man didn't have enough papers or ran out of papers. It can't be helped. You can't avoid mechanical troubles.

Q. And have the newsboys ever taken up with you on occasions their discharge or removal from a certain corner?

A. No, sir, because things like that have been very rare.

Q. And have they taken up with you on occasions the fact they were not receiving full returns? A. No, sir.

Q. Do the newsboys in the downtown area under your supervision receive full returns at present? A. Yes.

Q. Has there been a time in the past when newsboys under your supervision or who sell in the area under your supervision have not received full returns? A. Yes, there has been. [91]

Trial Examiner Kennedy: You might tell us what you understand by this term "returns."

The Witness: "Returns" is unsold copies.

Q. (By Mr. Mouritsen): And when a newsboy is given full returns, he is permitted to re-

(Testimony of Dave Bell.)

turn to the district manager the unsold copies that he has at the end of the day, is that correct?

A. Yes.

Q. And when he does not receive full returns, he is not permitted to return all of those unsold papers?

A. I don't know. In my territory, they get full returns. What is done in other parts of the city, I don't know. In my downtown district they get full returns.

Q. At present they do? A. Yes.

Q. Now, has there been a time in the past when newsboys in the area under your supervision have not received full returns? A. Yes.

Q. Now, when was the change made, if you can recall?

A. I can't recall the exact date. I don't know exactly how [92] long. Maybe it has been a year or less. I couldn't say just exactly when the change was made.

Q. To refresh your recollection, was the change made at or about the time when the newsboys who sold the Los Angeles Evening Herald and Express commenced to handle the News?

A. It was during the course of that period, yes, but I can't say just exactly what date or time.

Q. Did you participate in any conferences whereby the newsboys in the downtown area were permitted returns? A. No, sir.

Q. Do you know how the change was brought about? A. No, sir, I don't.

(Testimony of Dave Bell.)

Q. How did you ascertain that the newsboys were permitted to make full returns?

A. From my boss, Mr. Harrison.

Q. How did you find that out? Did you have a conversation with him?

A. He just told me that beginning that day or the next day, whatever time it happened, I don't recall the day, that they would get returns.

Q. And did you pass that information on to the district managers?

A. As I understand, they met with him and it wasn't necessary. They already knew it before I did.

Q. Now, from time to time during the last four or five years, [93] have you taken up with newsboys or have they taken up with you the fact they were not permitted full returns, that is, prior to 1937?

A. No, sir, it wasn't necessary to take it up because there was no return allowed.

Q. Did any of the newsboys ever make application to you to have that condition changed?

Did they ever complain to you that they were receiving too many copies of the paper?

A. No, sir. They could cut their order whenever they wanted to, or raise their order whenever they wanted to. They never made any particular complaints to me that they were getting too many papers.

Q. (By Mr. Compton): I understood you to say in your examination that the term "main spot" was synonymous with that of wholesaler.

(Testimony of Dave Bell.)

Did you mean that?

In other words, are the main spot men necessarily wholesalers?

A. Not necessarily. I guess what he means by main spot is one particular corner where the papers are throwed off and the [94] boys go over on that particular corner to get them. We can't throw them off on all the corners. In most cases it is a wholesaler.

Q. In most cases, it is a wholesaler, but not necessarily so? A. No.

Q. Now, when in your direct examination you testified concerning the obtaining of corners within your district, what did you mean by a man obtaining a corner within your district?

In other words, did that mean there was an open corner or just what did it mean?

A. Yes, if we had an opening some place to put somebody.

Q. And that meant there was a corner where no one else was selling?

A. Yes, or somebody had quit, or something.

Q. In your direct examination you testified concerning your trips around and about your district and that you had not observed any improper display of newspapers.

Do you in your trips around the district make any note of the manner in which newsboys are displaying the wares they have for sale? A. No.

(Testimony of Dave Bell.)

Q. Is that a matter of any interest to you?

A. No, sir.

Q. Do you ever attempt to regulate the manner in which news- [95] boys display newspapers.

A. I haven't yet.

Q. (By Mr. Mouritsen): Mr. Bell, you are the —what is your title again?

A. Superintendent of street sales.

Q. Superintendent of street sales in the downtown area?

A. Superintendent of street sales in the downtown district, yes.

Q. And as such, you are the representative of the Herald and Express for the circulation department in the downtown area? A. Yes.

Q. And your testimony is that you have no interest in the manner in which newsboys display the Los Angeles Evening Herald and Express in that area? A. Yes. [96]

JOE WOODS,

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you reside, Mr. Woods?

A. 1036 South Cloverdale, Los Angeles.

(Testimony of Joe Woods.)

Q. What is your business or occupation?

A. District man.

Q. (By Mr. Mouritsen) For the Los Angeles—

A. (Interrupting) Evening Herald and Express.

Q. And how long have you been so employed? [98]

A. Oh, about fifteen years.

Q. And at present, in what district do you work?

A. From Third and Hill to Third and Los Angeles, and north to First and Main, and west to First and Hill.

Q. That is in the City of Los Angeles?

A. Yes.

Q. Also known as the downtown area?

A. The downtown area.

Q. And Mr. Davey Bell is your immediate superior, is that correct? A. Yes.

Q. How long have you been employed as a district manager in the district in which you now work? A. The past fifteen years.

Q. Now, of what do your duties as district manager consist?

A. Supplying the boys with papers.

Q. Anything else?

A. I handle the magazines. That doesn't come under the Herald and Express.

Q. You handle the——

A. (Interrupting) The Liberty and the Post.

Q. And as such, you supply all the newsboys who work in the downtown area? A. Yes.

(Testimony of Joe Woods.)

Q. And of what do your duties with the Herald and Express [99] consist?

A. Well, that is my territory from Third and Hill to Third and Main and north to First and Main and west to First and Hill.

Q. What do you do in that area?

A. Supply the corners with the papers.

Q. Is that all you do? A. Yes.

Q. Do you make any collections?

A. Yes. I collect for all my own papers.

Q. And do you collect any unsold copies of the papers?

A. What do you mean? Do I collect any unsold copies of the papers? I take back all copies that are not sold.

Q. And you take them back from whom?

A. From the boys on the corners.

Q. What do you do with them?

A. Turn them back in to the Herald.

Q. And during the time that you have been so engaged, what have been the general hours during which the papers are published?

A. Well, the same as they are published always.

Q. And what are the same hours that they are always published?

A. Well, 9:30, 10:30, the same as they are running right now. There is no difference in the times. [100]

Q. And on the occasions, such as elections, when the paper is printed at an earlier hour, how do you apprise the newsboys of that fact?

(Testimony of Joe Woods.)

A. Well, just the papers are coming out an hour earlier. They have known that all the time. I have got practically the same crew of boys that have been down there with me in all them years.

Q. And what do you do if the boys do not show up at the hour earlier on such occasions?

A. Well, I try to do the best I can, have somebody to cover the corner until they come down.

Q. And on occasions when newsboys have not appeared on such occasions, have you removed them from the corner?

A. I have never fired nobody in my district.

Q. Do you still have the same newsboys that you started with fifteen years ago?

A. Practically.

Q. And have any of them quit?

A. Yes, I had a couple of them quit. A couple of them died. There was two of them died within one week, not through my fault.

Q. Have you put any other boys on the corner in the place of those who have died or quit?

A. I have.

Q. And how recently have you done that? [101]

A. Well, there was a fellow quit about three weeks ago.

Q. And what was his name?

A. Now, I can't recall. It was on the northwest corner of Third and Broadway.

Q. To refresh your recollection, was his name Louis Toffler?

(Testimony of Joe Woods.)

A. Louie was his name. I couldn't tell you his last name.

Q. And who replaced him?

A. Why, I put a boy there. A fellow wanted to work, he had asked me quite a few times if I ever had an opening, and I said "Well, this fellow quit," and I said, "There is a chance for you to go to work." I said, "Go down there and take the papers."

Q. And what did you tell the boy about selling the papers?

A. I didn't tell him nothing. He has been selling papers long enough to know what he has to do.

Q. Well, what does he have to do when he sells papers for the Los Angeles Evening Herald and Express?

A. He doesn't have to do anything besides getting the papers off of me and paying me for them. [102]

Q. And in the event that the newsboy wasn't acquainted with the facts regarding the circulation of the paper, what instructions would you give him regarding the price of the paper?

A. What instructions would I give him about the price of the paper?

Q. Yes.

A. Well, they know the price of the paper.

Q. And in the event that he wasn't acquainted with the hours during which the paper appears, what would you tell him regarding the time when he should be on the corner?

A. I never told no boy that ever worked for me

(Testimony of Joe Woods.)

what time he was to be on the corner, or when to quit. They come and go as they please.

Q. And in event a newsboy was not acquainted with what the proper method of display of the Herald and Express was, [103] what would you tell him with reference to that?

A. Mr. Mouritsen, I have never told none of my boys anything around my district. They have all been around there. They know what to do, they are their own boss, and I have never gone around there and bulldozed them or told them to get out and hustle. They came when they felt like it, and they quit when they felt like it, and that is all there was to it. I have never told anybody what time to show up, or what time to quit, as long as I have been around there. There is not one newsboy in my territory that can ever get up here and testify I ever told him what time to show up or what time to quit, or that I ever fired anybody.

Q. Have you ever given any of the newsboys within your district a temporary vacation?

A. No.

Q. Have you ever——

A. (Interrupting) Yes, pardon me. I did one at Third and Main, Mack—he is dead now—for being drunk. I just told him he couldn't handle my papers any more, and then they came down to see me a couple of days later and I said "All right, Mack, go back to work and behave yourself," and that is the only time.

Q. And that is the only occasion?

(Testimony of Joe Woods.)

A. That is all.

Q. Did you ever give an enforced vacation to Harry Relish? [104] A. Harry Relish?

Q. Yes.

A. Harry Relish never worked for me. Harry Relish works on Fifth and Spring. That ain't my territory.

Q. Did you ever take Harry Gish off of a spot and tell him he couldn't sell there any more?

A. Harry Gish?

Q. You have no such recollection?

A. No. If I would see him I would know who he is and I could tell you.

Q. But your testimony is still that you have never fired anyone off of a corner? A. No.

Q. Or any other spot? A. No. [105]

Tuesday, June 11, 1940

Met, pursuant to adjournment, at 9:30 o'clock A. M.

[108]

Mr. Compton: If the Examiner please, before we get into that matter, I would like to advise you that I have this morning filed, and Mr. Mouritsen and I have signed, an amendent to our brief statement of facts, which I would like to present for the record. At this time Mr. Mouritsen has them.

Mr. Mouritsen: If the Examiner please, if this

may be marked Board's Exhibit 2-A for identification.

(Thereupon, the document above referred to was marked as Board's Exhibit 2-A for identification.)

Mr. Cosgrove: May it be stipulated the same ruling be made on the objection by the Los Angeles Times to Exhibit 2-A as was made to Exhibit 2?

Mr. Mouritsen: Perhaps I had better make my offer first.

At this time, Mr. Examiner, I will offer as Board's Exhibit 2-A the document that heretofore has been marked Board's Exhibit 2-A for identification, and such document is an amendment to the agreed statement of facts that is already in evidence, I believe, as Board's Exhibit 2.

Trial Examiner Kennedy: And is it with the same proviso as Board's Exhibit 2 as to the application to other parties?

I believe you limited your offer.

Mr. Mouritsen: I will limit the offer in this instance [109] as I did my offer in Board's Exhibit 2.

Trial Examiner Kennedy: Is there any objection to that limitation?

Mr. Cosgrove: No objection.

Trial Examiner Kennedy: It will be received in evidence with that limitation.

(Thereupon, the document above referred to

was received in evidence and marked as Board's Exhibit No. 2-A.) [110]

WILLIAM J. HARRISON

recalled to the stand by and on behalf of the National Labor Relations Board, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Now, Mr. Harrison, I desire at this time to again go into the matter of these men who work for the paper, whom you term wholesalers, and who are indicated in the petition as check men. [112]

Could you outline briefly their connection with the paper and the duties that they perform for the paper?

A. Yes. I think we have it here, Mr. Mouritsen, and if I may be permitted to read this——

Q. (Interrupting): Yes.

And for the record, Mr. Harrison is reading from a general statement furnished the Labor Board with reference to these people some time ago.

A. (Reading document): "By an arrangement convenient to the paper and profitable to the

(Testimony of William J. Harrison.)

newsboys, who may be on a full time corner, schoolboys are instructed to go to the wholesaler convenient to their selling place and get their allotted number of papers. These full time newsboys, in so far as their services in distributing newspapers to the schoolboys are concerned, are termed 'wholesalers.' These wholesalers hand over to the boys who come to the corner for such purpose the newspapers such newsboys buy and are to sell.

"Wholesalers may be employed for this purpose by the Los Angeles Evening Herald and Express or by a dealer. If employed by the Los Angeles Evening Herald and Express, the wholesaler hands over the papers to the boys for the account of the Los Angeles Evening Herald and Express. If employed by a dealer, he hands over the papers to the boys for the account of the dealer. The wholesaler receives in each instance a flat wage for the stipulated service, either from the [113] Los Angeles Evening Herald and Express when he hands over papers for it, or from the dealer, when he hands over papers for him, and does not receive any commission or bonus dependent on the number of papers he thus hands over to the newsboys. The wholesaler has no discretion as to whom he will hand the papers to, but follows the instructions of his employer, namely, the Los Angeles Evening Herald and Express or the dealer, as the case may be.

"In the event he is employed by the Los Ange-

(Testimony of William J. Harrison.)

les Evening Herald and Express for these services, his instructions will come from a particular employee of the Los Angeles Evening Herald and Express termed a 'district manager.' In the event he is employed by a dealer, his instructions come direct from the dealer.

"The wholesaler collects the purchase price of the newspapers he hands over to the newsboys for and on account of his employer, that is, the Los Angeles Evening Herald and Express, or the dealer, as the case may be, and does not pass upon credit risks and is not responsible for and does not assume credit losses. These duties constitute the wholesaler's only employment, and these services are rendered apart from and have no connection with the wholesaler's own independent business of selling newspapers and magazines on his own account and risk. [114]

Now, Mr. Harrison, by virtue—does that statement you have read outline correctly the position that these wholesalers occupy with reference to the Los Angeles Evening Herald and Express?

A. That is true.

Q. Now, directing your attention to the instructions as outlined in the statement that you have read, how are those instructions conveyed to these wholesalers or check men?

A. By the district manager in charge of that territory.

Q. These wholesalers or check men appear upon

(Testimony of William J. Harrison.)

the payroll of the Los Angeles Evening Herald and Express? A. They do.

Q. The same as the district managers or any other employees; is that correct?

A. They do.

Q. And are not these wholesalers or check men instructed to be on their corners at a certain time so they can obtain the papers they are to hand out to other people?

A. Wholesalers are, as a rule, men who are on full time corners. They know when the editions come out, and they know when they should be on their corners.

Q. And if they do not appear on their corners, when they should appear, what occurs then?

A. If the wholesaler is absent from his corner at the time [115] he should supply boys with newspapers, our district manager performs the duties.

Q. And what occurs with reference to the wholesaler or check man if he fails to perform those duties?

A. If he is regularly absent from his corner, we instruct him that unless he can attend to the duties for which we pay him that he will have to get another wholesaler.

Q. And such wholesalers or check men do not determine the number of papers that they pass out to the other newsboys, is that correct?

A. In the residential section, no; in the downtown area they do.

(Testimony of William J. Harrison.)

Q. And will you outline what you mean by the downtown area, please?

A. Well, that is the central business part of the city.

Q. Could you give that any geographical description?

A. Not with certainty, Mr. Mouritsen. I may be a little off in my boundary lines, but my impression is that that runs from First to Pico, and from Figueroa to Los Angeles.

Q. And that, in general, is the area that comes under the supervision of Mr. Davey Bell, who was here yesterday; is that correct?

A. That is true. [116]

GORDON F. NORTON

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Where do you reside, Mr. Norton?

A. 1853 Nichols Canyon Road, Hollywood.

Mr. Mouritsen: May this be marked for identification as Board's Exhibit No. 3?

Mr. L. B. Binford: What is that that is marked Board's 3 for identification?

(Testimony of Gordon F. Norton.)

Mr. Mouritsen: I will show you in just a minute, after it is marked.

Mr. L. B. Binford: Thank you.

(Thereupon, the document above referred to was marked as Board's Exhibit No. 3 for identification.)

Mr. Mouritsen: Mr. Compton, you are familiar with this, but let the record show I am handing the document marked Board's Exhibit 3 for identification to counsel.

(The Exhibit referred to was passed to counsel.)

Q. (By Mr. Mouritsen): Now, Mr. Norton, I will show you the [118] document that is marked Board's Exhibit 3 for identification, and ask if you prepared that document? A. I did.

Q. I will ask you if in the preparation of that document you had access to the payrolls of the Los Angeles Evening Herald and Express?

A. I did.

Trial Examiner Kennedy: I think you might qualify the witness as to his connection with the case.

Mr. Mouritsen: Mr. Examiner, at this time I desire only to go into the matter regarding the preparation of this document, and I think I can lay a foundation without going into a wide field, and if the Examiner permits, I will proceed along those lines.

(Testimony of Gordon F. Norton.)

Trial Examiner Kennedy: What is your occupation, Mr. Witness?

The Witness: I am an agent for the Evening Herald Express.

Trial Examiner Kennedy: And how long have you had that position?

The Witness: Probably three and a half years.

Trial Examiner Kennedy: Proceed.

Q. (By Mr. Mouritsen): I note on the lefthand side of the paper a number of names under a column headed "Name."

Will you explain what those names are? [119]

A. That is the name of the person who receives or should receive the check designated under that name, by the Evening Herald and Express.

Q. I see.

Then is it correct to say that all of those in the lefthand column are check men or wholesalers of the Los Angeles Evening Herald and Express?

A. On this page all except one of them are.

Q. Will you indicate on that page which isn't?

A. The one listed here who receives a check for handling complaints for Mr. Gratz.

Q. I see.

And that name is August Peterson?

A. Yes, August Peterson.

Q. Now, on—if I may number these pages for convenience and reference; I will just number them in the order in which they appear, if that is satisfactory, down on the right-hand corner. There

(Testimony of Gordon F. Norton.)

are nine pages. I have numbered from 1 to 9.

A. There is one more name on that page, Jessie L. Moore, who receives a check for janitor work at Mr. Gratz' branch office.

Q. And what is the name?

A. Jessie L. Moore.

Q. Oh, you gave that name, Jessie L Moore.

A. Yes. [120]

Q. In the second column from the left, there appears the heading "Location," and a number of addresses appear under that.

Will you explain what those addresses are?

A. That is the location on which they perform the duties of a wholesaler for the Evening Herald and Express.

Q. And in the third column from the left, which is headed "Amount," or amount abbreviated, "of check," appears a number of figures.

Will you explain, please, what those figures are?

A. That is the amount of compensation they receive for performing such duties.

Q. And that indicates dollars and cents; is that correct? A. Yes.

Q. In the next column from the left, which is headed "Approximate Number of Boys," appears various numbers. Will you explain what those numbers are, please?

A. That is the approximate number of boys to whom these men wholesale papers.

Q. And in the last column on the right, which

(Testimony of Gordon F. Norton.)

is headed "Branch Manager and/or District Manager," appears a number of names. There appear to be two columns of names. To the left first appears "James M. Gratz; and who is he? Is that the branch manager——

A. (Interrupting): Mr. Gratz is the branch manager of the [121] branch.

Q. And these names appearing to the extreme right on the document are district managers who work under Mr. Gratz' supervision; is that correct?

A. That is correct.

Q. On page 2 of Board's Exhibit 3 for identification appear the same headings.

Is the information you have given us regarding page 1 also true concerning page 2?

A. That is true of page 2: There are no exceptions on page 2.

Q. They are all check men or wholesalers; is that correct?

A. They are all check men or wholesalers.

Q. On page 3 are all of those men check men or wholesalers and is the other information the same as you have given us regarding page 1; that is, of Board's Exhibit 3 for identification?

A. The information is the same. There are no exceptions on this page.

Q. On page 4 appear three names under the same headings as on pages 1, 2 and 3.

Are all of those men who appear on there check men or wholesalers?

(Testimony of Gordon F. Norton.)

A. The three men at the top of the page are wholesalers.

Q. Now, on the next portion of the page, that is, under the [122] three names, appears the heading "All Day Hustlers—No Check."

Will you please explain what those names indicate?

A. These are the names of men who have main spots or all day spots but who do no wholesaling work or receive a check from the Evening Herald and Express.

Q. And when you say "all day hustlers," what does that mean?

A. It means that they start to work on one of our earlier editions, either the Green Flash or the latest News, or the first Sports, and work from that time on until late in the evening, whenever they desire to quit.

Q. (By Mr. Mouritsen) On page 5 of the Exhibit, that is, Board's Exhibit No. 3 for identification, appear the same headings that appear on page 1.

Are all of those men whose names appear upon that page check men or wholesalers of the Los Angeles Evening Herald and [123] Express?

A. There are four exceptions on this page.

Q. Will you please point out such exceptions?

A. Richard Martinez is a part-time helper.

Q. To whom

A. To branch manager Gordon F. Norton. How-

(Testimony of Gordon F. Norton.)

ard J. Gottengen is a part-time helper under William Davidson. Milton O. Anderson handles complaints for Dave Goetz. Armando G. Perfetto is a helper for George Mosher.

Q. And other than the names you have indicated, all others are the names of men who are wholesalers or check men for the Herald and Express; is that correct? A. That is correct.

Q. On page 6 of Board's Exhibit 3 for identification appear a number of names under the heading "All Day Hustlers—No Check."

Will you please tell us what those names indicate, or what duties they perform?

A. They are all day hustlers comparable to my definition of an all day hustler previously given.

Q. On page 7 of Board's Exhibit 3 for identification appear the same headings that appear on page 1 of said Exhibit.

Are there any names on that sheet, that is, page 3, above the caption "All Day Hustlers—No Check," who do not perform the duties of wholesalers or check men for the Los Angeles [124] Evening Herald and Express?

A. All of the men listed on the upper half of that page are paid to perform the duties of a wholesaler.

Q. And those names appearing below "All Day Hustlers—No Check," on that page 7 of Board's Exhibit 3 for identification, are all day hustlers, as you have explained before; is that correct?

(Testimony of Gordon F. Norton.)

A. That is correct. That is correct.

Q. On page 8 of Board's Exhibit 3 for identification appears the notation, "All Day Hustlers—No Check."

Those men are all day hustlers, as you have previously explained; is that correct?

A. That is correct.

Q. And is that also true of the names appearing on page 9 of Board's Exhibit 3 for identification?

A. That is right.

Mr. Mouritsen: At this time, Mr. Examiner, I offer as Board's Exhibit 3 that document marked Board's Exhibit 3 for identification.

Mr. Cosgrove: Will it be stipulated, Mr. Mouritsen, that it has no application to the Times Mirror case?

Mr. Mouritsen: That is so stipulated.

Mr. Hall: Will it be stipulated it has no relation to the Los Angeles Examiner case?

Mr. Mouritsen: That is so stipulated. [125]

BOARD'S EXHIBIT No. 3

SOUTHWEST RESIDENTIAL DISTRICT

Name	Location	Am't of check	Approximate number of boys	Branch Manager and/or District Manager	
Arthur H. Frye	Jefferson & San Pedro	5.30	2	J. M. Gratz	Fracht
Lucas Garcia	Vernon and Main	5.30	3	"	"
Charles J. Hinderer	Slauson & Main	4.80	1	"	Woolsey
Samuel Jaffe	68th and Central	5.80	1	"	"
Solomon Kaplan	Santa Barbara & Vermont	4.96	3	"	Reinschrieber
William Keeler	Manchester & Figueroa	4.80	3	"	Plotkin
Roman N. Kent	35th and Vermont	5.80	1	"	Reinschrieber
Ray Lambert	Washington & Central	4.96	3	"	Fracht
Andrew C. Lawrence	Jefferson & Vermont	7.40	3	"	Reinschrieber
Arthur A. Lindsley	54th & Crenshaw	5.05	2	"	Plotkin
William Lloyd	39th and Western	4.80	3	"	Reinschrieber
Harry L. McLean	Slauson & Compton	4.80	1	"	Woolsey
John D. Martellotti	Florence & Vermont	5.05	4	"	Plotkin
Alfredo M. Mendez	Wash & San Pedro	5.30	2	"	Fracht
Alfred Monje	7th and Alameda	6.80	2	"	Brooks
Jesse L. Moore	Janitor	3.00		"	
Charles W. Parnell	81st & Vermont	5.80	2	"	Plotkin

Board's Exhibit No. 3 (Continued)

Southwest Residential District (Continued)

Name	Location	Am't of check	Approximate number of boys	Branch Manager and/or District Manager	
August Petersen	Complaints	1.75		Driver for Gratz	
Floyd Rinehart	Slauson & Crenshaw	5.05	2	J. M. Gratz	Plotkin
Israel M. Traub	39th & Vermont	5.80	1	"	Reinschrieber
William B. Wahnish	Sta Barbara & Western	4.80	3	"	"
Glenn L. Whitford	54th and Vermont	5.15	2	"	Plotkin
Bob Cohen	Sta Barbara & Figueroa	9.20	3	"	Abel
Sam Goldfinger	Vernon & Vermont	5.05	3	"	Reinschrieber
Basil Hale	Manchester & Vermont	4.80	3	"	Plotkin
Jack E. Hill	Jefferson & Grand	4.80	1	"	Woolsey
David Kadish	Manchester & Broadway	9.00	7	"	Plotkin
Sam Kahn	Florence and Broadway	4.96	3	"	"
Carlisle T. Lott	Vernon & Central	5.26	7	"	Fracht
James A. Munro	Vernon & Broadway	7.00	4	"	Abel
Morton Miller	Slauson and Vermont	6.50	4	"	Plotkin
Virgil R. Newell	54th and Western	4.96	2	"	"
William Parhm	Vernon & Long Beach	5.80	6	"	Brooks
Morris B. Rosen	Ball Park—Wrigley	5.00	10	"	Abel

Board's Exhibit No. 3 (Continued)

Southwest Residential District (Continued)

Name	Location	Am't of check	Approximate number of boys	Branch Manager and/or District Manager	
Francis Rosenthal	Jefferson & Main	10.00	5	J. M. Gratz	Abel
Arthur Stillwater	Vernon & Hoover	4.80	2	"	Reinschrieber
Louis Velasco	Vernon & Avalon	4.80	3	"	Fracht
Walter Weiss	Coliseum	3.50	10	"	Abel
Floyd N. Winters	Vernon & Western	4.80	2	"	Reinschrieber
Sam Alliotta	Slauson & Central	6.80	1	"	Woolsey
Jacob H. Bell	48th and Western	4.80	1	"	Reinschrieber
Louis J. Broguiere, Jr.	12th and Central	6.80	1	"	Fracht
John W. Burger	Slauson & Western	6.40	3	"	Plotkin
Frank E. Burns	12th and Maple	6.80	2	"	Fracht
Eugene Cralego	Florence and Figueroa	5.50	4	"	Plotkin
Carroll R. Doyle	Complaints	2.65	3	"	Reinschrieber
Benjamie Estrada	Olympic & Alameda	6.80	3	"	Brooks
Ralph J. Fernald	Vernon and Figueroa	4.80	3	"	Reinschrieber

Board's Exhibit No. 3 (Continued)

HOLLYWOOD DISTRICT

Name	Location	Am't of check	Approximate number of boys	Branch Manager and/or District Manager	
Richard Thornberry	Beverly & Western	5.40	5	A. W. Brewster	Vaughn
Walter P. Wallace	Melrose and Western	8.10	2	" "	France
Charles Woods	2nd and Western	9.00	1	" "	France
Ira A. Blakeman	5th and San Pedro	1.35	2	" "	Wheeler
Elisa M. Browser	3rd and Flower	2.00	1	" "	Chance
Joe Camargo	Sunset and Figueroa	3.00	5	" "	Chance
Lawrence E. Boyle	Temple and Glendale	3.50	4	" "	Chance
Oscar G. Geiger	6th and Los Angeles	1.80	2	" "	Wheeler
Melvin Schwab	6th and Bixel	1.35	1	" "	Chance
George Ahlstrom	3rd and Figueroa	10.50	6	" "	Chance
Miguel Aranda	7th and San Pedro	2.25	2	" "	Wheeler
Frank Bengles	Hollywood and Las Palmas	4.50	1	" "	France
Maurice Blacker	" " Vine	9.00	7	" "	France
Sanford Bressman	" " Western	8.10	2	" "	France
John E. Coulter	Beverly & Vermont	4.50	3	" "	Vaughn
Richard P. Crawford	Sunset and Parkman	2.00	4	" "	Chance
Carl A. Erickson	Santa Monica & Vine	3.00	3	" "	Hepburn

Board's Exhibit No. 3 (Continued)

Hollywood District (Continued)

Name	Location	Am't of check	Approximate number of boys	Branch Manager and/or District Manager	
Al. H. Fabricant	Holly & Cahuenga	10.80	4	A. W. Brewster	France
Florentino Fernandez	New Depot	12.50	2	"	"
John Goods	10th and Western	5.40	2	"	Beebe
Peter Guzman	Wilshire & Western	7.50	5	"	France
Clarence O. Knox	3rd and Western	4.50	1	"	France
Earl D. Lake	5th and Los Angeles	3.60	1	"	France
John P. Linowski	Wilshire and La Brea	8.10	4	"	Wheeler
Delmar D. Overstreet	6th and Western	9.00	3	"	Jackson
John C. Packard	Melrose and Vine	4.50	4	"	Jackson
Arthur C. Price	Sunset and Vine	5.40	3	"	Vaughn
Robert G. Price	Sunset and Highland	5.40	3	"	Hepburn
Edward Richmond	Hollywood and Highland	9.00	4	"	Hepburn
Frank Sarach	Wilshire and Fairfax	9.30	4	"	France
Harold W. Silverman	Sunset and Western	7.20	2	A. W. Brewster	Jackson
Arthur Steuart	Santa Monica and Western	10.80	4	"	France

Board's Exhibit No. 3 (Continued)

Hollywood District (Continued)

Name	Location	Am't of check	Approximate number of boys	Branch Manager and/or District Manager
ALL DAY HUSTLERS—NO CHECK				
Louis Zukopp	Hollywood and Vine			A. W. Brewster
Jack Bentley	" " "			"
Chas. Barba	" " Ivar			"
Henry Fritz	" " Cahuenga			"
Kenneth Hull	" " Wilcox			"
Harry Leeward	" " "			"
W. F. Harvard	" " Western			"
Frank Lewoczki	5th and Western			"
Ray Bauman	Wilshire and Western			"
Joe Coleman	Beverly and Santa Monica			"
John Harrison	2nd and Figueroa			"
Harry Blackwell	7th and Los Angeles			"
Austin Twilla	5th and Maple			"
Floyd Banor	" " Wall			"
Leroy Giger	" " Crocker			"
Henry Morgan	" " Towne			"
Nick Giger	" " Stanford			"
Max Spellman	102 East Seventh St.			"

Board's Exhibit No. 3 (Continued)

MISCELLANEOUS RESIDENTIAL DISTRICTS

Name	Location	Am't of check	Approximate number of boys	Branch Manager and/or District Manager
Joseph Kanter	8th and Vermont	5.40	7	Gordon F. Norton
Richard Martinez	part time helper	1.80		"
Fred C. Sowell	Wilshire and Vermont	1.80	4	"
Philip Spampinato	7th and Alvarado	7.40	8	"
Edward K. Bodoglous	7th and Union	1.80	4	"
Max Cohen	8th and Normandie	1.80	3	"
Julian Crutcher	6th and Alvarado	4.00	6	"
Robert N. Deane	6th and Rampart	1.80	5	"
Thomas R. Mathews	Brooklyn and Soto	3.00	8	Wm. Davidson
Dale E. Wheeler	Whittier & Alma	1.00	3	"
John Babashoff	Whittier & Boyle	2.10	4	"
Joshua O. Barbee	Whittier and Indiana	2.00	2	"
Salvador R. Duarte	Whittier and Kern	2.00	6	"
Alex M. Galipeaux	9th and Boyle	2.50	5	"
Howard J. Gottegen	part time helper	8.00		"
Brian O'Reilly	Pico and Western	2.70	3	Hutchinson
Rudy H. Pino	24th and Vermont	3.35	3	"

Board's Exhibit No. 3 (Continued)

Miscellaneous Residential Districts (Continued)

Name	Location	Am't of check	Approximate number of boys	Branch Manager and/or District Manager
Elbert Renfro	Washington and Vermont	9.00	5	Hutchinson
Milton J. Shepherd	Washington and Figueroa	6.00	5	"
James V. Apice	Pico and Alvarado	5.00	8	"
George Bessonett	Adams and Vermont	3.00	3	"
Joe M. Hogan	Venice and Vermont	3.35	3	"
Alfred N. Huzing	Pico and Vermont	6.30	4	"
Milton O. Anderson	Handles complaints	5.40		Dave Getz
Clayton T. Brown	Washington & Rimpau	5.40	5	Frank Montoya
John M. Haack	Pico and Robertson	5.40	4	"
Armando G. Perfetto	Helper for Mosher	8.10		George Mosher
Nash Gonzales	General Hospital	2.70	1	"
Charles C. Spiller	87th and Broadway	6.00	4	R. T. Brewster
	ALL DAY HUSTLERS—NO CHECK			
Felix Cota	Pico and Norton			Frank Montoya
Val Lopez	Pico and La Cienega			"
Joe Acosta	Whittier and Euclid			Wm. Davison

Board's Exhibit No. 3 (Continued)

Miscellaneous Residential Districts (Continued)

Name	Location	Am't of check	Approximate number of boys	Branch Manager and/or District Manager
	ALL DAY HUSTLERS—NO CHECK (Continued)			
Mrs. Marian Jameno	Broadway and Griffin			Joe Gonzales
Howard Morgan	Mayfair Hotel			Gordon F. Norton
Stan Newberry	6th and Witmer			"
Harry Malorrus	Smith's Market			"
Sidney Malorrus	" "			"
S. Ferries	" "			"
Bill Hicks	11th and Alvarado			"
Joe Epstein	9th and Alvarado			"
M. Nickerson	7th and Alvarado			"
Paul Santa Emma	Wilshire and Alvarado			"
L. Federmeyer	" " "			"
Paul Barbako	6th and Bonnie Brae			"
Frank Tickner	7th and Francisco			"
Hilliard Ash	Medical Bldg., Wilshire and Alvarado			"
Peter Polsky	6th and Vermont			"

Board's Exhibit No. 3 (Continued)

DOWNTOWN LOS ANGELES DISTRICT

Name	Location	Am't of check	Approximate number of boys	Branch Manager and/or District Manager
George Aronson	4th and Hill	4.00	5	Dave Bell
William M. Axelrod	5th and Hill	10.80	3	" "
Samuel J. Berman	9th and Broadway	8.00	8	Jimmy Austin-Dave Bell
George G. Brennan	6th and Grand	4.05	4	Solly Epstein-Dave Bell
Rubin M. Charon	7th and Broadway	8.10	7	Dave Bell
Frank A. Crossen	Temple and Broadway	9.90	17	" "
Nathan M. Deutch	4th and Main	8.10	2	" "
Mike Goldberg	5th and Spring	4.05	3	" "
Abe Gordon	5th and Main	9.00	7	" "
Herman Levenson	8th and Broadway	8.10	4	" "
Abraham P. Marcus	P.E. Depot	9.90	4	" "
Emanuel Miller	8th and Spring	5.40	4	" "
Oscar G. Ossorio	11th and Main	5.40	8	" " Jimmy Austin
Willie Schulman	7th and Spring	9.00	11	" " " "
Gus M. Seder	6th and Figueroa	5.40	3	" " Don Pazzula
Sam Segal	5th and Broadway	10.80	5	" "
Leonard Sherman	Subway Terminal	10.00	6	" "
A. W. Spencer	9th and Figueroa	1.50	3	" " Don Pazzula

Board's Exhibit No. 3 (Continued)

Downtown Los Angeles District (Continued)

Name	Location	Amt. of check	Approximate number of boys	Branch Manager and/or District Manager
	ALL DAY HUSTLERS—NO CHECK			
Ben Rothman	3rd and Hill			Dave Bell
Sidney Faber	3rd and Broadway			" "
W. Perrson	" " "			" "
Mike Barrett	" " "			" "
B. Allen	" " "			" "
J. Shomow	" " Spring			" "
Carl Hummel	3rd and Main			" "
Louis Goldstein	" " "			" "
H. Bentley	" " "			" "
J. Raut	2nd and "			" "
Brown	" " "			" "
F. Peters	" " Los Angeles			" "
J. Valdez	Higgins Bldg.			"
Jim Marcus	2nd and Spring			"
H. Stout	" " Broadway			"
R. Pierson	" " "			"
M. Klein	" " Hill			"

Board's Exhibit No. 3 (Continued)

Downtown Los Angeles District (Continued)

Name	Location	Am't of check	Approximate number of boys	Branch Manager and/or District Manager
	ALL DAY HUSTLERS—NO CHECK (Continued)			
Ed. Bryan	1st and Broadway			Dave Bell
M. Onuska	" " Spring			"
S. Steinman	" " Main			"
Herman L. Detyan	7th and Flower			"
Elmer Bollitt	6th and Hope			"
Ed Blodger	7th and Figueroa			"
Emma Brockway	8th and Figueroa			"
Bernard R. Kearney	8th and Grand			"
Ruben Seltzer	8th and Hill			"
Jerry Robbins	7th and Hill			"
Irving Goldstein	" " "			"
Jimmy Whitlow	" " "			"
Albert Gordon	" " Olive			"
Willie Georgino	" " Grand			"
Bob Greenberg	" " Olive			"

Board's Exhibit No. 3 (Continued)

Downtown Los Angeles District (Continued)

Name	Location	Am't of check	Approximate number of boys	Branch Manager and/or District Manager
	ALL DAY HUSTLERS—NO CHECK (Continued)			
Morris Cohn	7th and Hill			Dave Bell
Jake Axelrod	" " "			"
Lester Bruce	8th and Olive			"
Fred A. Gibson	" " "			"
Frank Dolan	5th and Hill			"
Charlie Meyers	7th and Broadway			"
Dave Small	" " "			"
Delbert Howell	" " "			"
Abe Pipesburg	6th and Broadway			"
Angeleo Seo	6th and Broadway			"
Phil Epstein	5th and Broadway			"
Steven D. Breckenridge	" " "			"
Philip Shanks	4th and "			"
W. A. Robbins	" " "			"
Joe Willie	" " "			"

Board's Exhibit No. 3 (Continued)

Downtown Los Angeles District (Continued)

Name	Location	Amt. of check	Approximate number of boys	Branch Manager and/or District Manager
	ALL DAY HUSTLERS—NO CHECK (Continued)			
Ben Schwartz	6th and Spring			Dave Bell
Louis Schwartz	" " Spring			"
Harry Relis	5th and "			"
Pat Camoore	" " "			"
John P. Tierney	4th and "			"
Alfred Knutson	" " "			"
Joe Hines	9th and Main			"
James Gallagher	7th and "			"
Louis Goldberg	P. E. Depot			"
Frank Carrier	" "			"
Phil Bloom	5th and Main			"
Lawrence Allen	" "			"
Milton Newman	" " Olive			"
Geo. Berman	9th and Hill			"
Willie Cohen	11th " Broadway			"
Al Schwartz	8th and Broadway			"

(Testimony of Gordon F. Norton.)

Cross Examination

Q. (By Mr. Compton) Mr. Norton, referring your attention to Board's Exhibit 3, I will ask you if the names of those persons designated on the list as wholesalers were taken from records maintained by the Los Angeles Evening Herald and Express? Were they payroll records or something of that sort? [127]

The Witness: The names on this list were taken from the payroll record of the Evening Herald and Express.

Q. (By Mr. Compton) Now, does the Evening Herald and Express maintain any record of any sort or description of the names of those persons designated on that list as full-time hustlers who received no checks? A. No, we do not.

Q. How did you procure those names?

A. I procured those names from the district men who sell papers to these news vendors, or all-day hustlers.

Q. As far as you know, then, those are the persons who occupy full time corners in the districts of those various district men?

A. That is right.

Q. But you have no record other than the statements given to you by those district men?

A. That is correct. [128]

Q. (By Mr. Compton) At whose request did you prepare this list, Mr. Norton?

(Testimony of Gordon F. Norton.)

A. At the request of Mr. Harrison, circulation manager.

Q. Well, in attempting to ascertain those names about which we are now talking, did you discuss the matter with any of the district men? [129]

The Witness: Yes, I did.

Q. (By Mr. Compton) Did any district man exhibit to you any list which purported to contain the names of persons within his district occupying so-called main spot or full time corners?

A. They did not have the list of those. [130]

Cross Examination

Q. (By Mr. L. B. Binford) In referring to Board's Exhibit 3, is the information obtained with respect to the payroll, or any of the lists thereon, obtained by you from any of the records or the payroll of the Stockholders Publishing Company?

A. No, sir.

Cross Examination (Continued)

Q. (By Mr. Compton) Mr. Norton, recalling your attention to Board's Exhibit No. 3, I will ask you how you procured the [131] names of those persons designated on that list as full time hustlers receiving no checks?

A. It was necessary for me to go to the branch manager or the district manager in each case, and ask him to give me a list of his full time or all day hustlers. He did not have any list, so he prepared it for me.

(Testimony of Gordon F. Norton.)

Q. (By Mr. Compton) At any time you interrogated such branch manager, did he at that time have any such list, list in writing, or have any list or record of those persons? [132]

A. No, sir.

Mr. Mouritsen: I will object to that as immaterial and no foundation laid.

Q. Did you interrogate any district managers at the time when you were preparing this list?

A. Yes, sir.

Q. Did any such branch manager have prepared or in his possession or among his records any list of any persons designated as occupying a full time corner? A. No, sir.

Q. Mr. Norton, do you know of your own knowledge how the names of those persons were procured? Just answer yes or no.

A. That is rather a hard question to answer.

Q. You are unable to answer the question, Mr. Norton? A. That is right.

Q. Did you observe personally the preparation of any of those lists by any district man or branch manager? A. Yes, I did.

Q. Can you recall any branch manager or district manager whose efforts in the preparation of such a list you observed? A. Yes, sir. [133]

Q. Who was that?

A. William Davidson for one; Frank Montoya for another.

Q. Will you state what you observed in their manner in the preparation of that list, how they

(Testimony of Gordon F. Norton.)

prepared it? Will you answer that question first as to Mr. Davidson, and then as to Mr. Montoya?

A. I asked Mr. Davidson to give me the list of his all day hustlers. He said that he did not have any such list, but that he would prepare it for me. I then watched him sit down and make a list of the corners that were covered all day, and in one or two cases he did not know the name of the boy; in other cases he did not, but he said that he would get the name for me.

Q. How about Mr. Montoya?

A. In Montoya's case it was very similar. He was not sure of the names of one or two of the boys, and he had to go over the list according to location, first, and then find out the name of the boy on that location.

Q. Is it your recollection that either Mr. Davidson or Mr. [134] Montoya knew the names of the majority of the persons occupying those corners?

A. I feel that they did know the names of most of the men who had been on the—who were on their corners in their district.

Q. Recalling your attention to the persons you named as—you designated as exceptions on that list as August Peterson, Jesse L. Moore, Richard Martinez, Harry J. Gottegen, Milton O. Anderson, Armando Perfetto; are those persons hustlers?

A. To my knowledge, they are not hustlers.

Q. Do any of them perform services as wholesalers—of the six men I am referring to?

A. To my knowledge, they do not.

(Testimony of Gordon F. Norton.)

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Norton, directing your attention to the name of August Peterson, followed by the word "Complaints" on page 1 of Board's 3, is it true that Mr. Peterson received $1.75—check in the amount of $1.75 from the Herald-Express? A. That is true.

Q. Is that per day, per week, or per what?

A. That is per week.

Q. And you obtained this information regarding Mr. Peterson from the payroll records of the Evening Herald and Express; [135] is that correct?

A. I obtained the name of August Peterson from the payroll records of the Evening Herald and Express, in the fact that he handled complaints for Mr. Gratz.

Q. And the amount of his compensation?

A. That is on the payroll.

Q. Of the Herald-Express?

A. That is right.

Q. Mr. Peterson handles complaints.

What does that signify, if you know?

A. Frequently people will call up and say that they did not get a paper in Mr. Gratz' branch, and this man Peterson will then deliver the paper to them. There will be a few of those calls in an evening.

Q. Is that with reference to the street sale or home delivery?

A. That is in reference to home delivery.

Q. And with reference to Mr. Jesse L. Moore

(Testimony of Gordon F. Norton.)

on page 1 of Board's Exhibit 3, you obtained the fact that he obtains a check in the amount of $3.00 a week from the payroll records of the Herald-Express; is that correct?

A. That is right.

Q. And with reference to these other men who you have named as exceptions, you obtained the information regarding the amount of compensation they received from the payroll records? [136]

A. That is correct.

Q. Now, in describing the method by which you procured the names of the hustlers from the district managers, I believe you stated that they went over a list of location; is that correct?

A. That is not correct.

Q. Approximately how many of these district managers did you confer with in the preparation of Board's Exhibit 3?

A. I would say approximately five.

Q. How many branch managers?

A. I included branch managers in that. I am sorry.

Q. A total of five branch managers and district managers? A. Yes.

WILLIAM J. HARRISON

recalled to the stand by and on behalf of the National Labor Relations Board, having been previously duly sworn, was further examined and testified as follows: [137]

(Testimony of William J. Harrison.)

Direct Examination

Q. (By Mr. Mouritsen) Mr. Harrison, directing your attention to Board's Exhibit 3, the third column from the left, you will note a number of figures indicating a certain amount of money. You will note that these figures vary considerably.

A. Yes.

Q. And it has been testified that that is the amount of compensation paid these wholesalers or check men. A. Yes.

Q. Will you please explain the reasons for the difference in the amounts paid these check men or wholesalers?

A. The importance of the corner has something to do with it, the time that the wholesaler is actually engaged in wholesale service, and the fact that his compensation is based upon the Wage and Hour Act for the number of hours that he actually works as a wholesaler.

Q. And the determination of the amount of compensation that he receives is determined by the Herald and Express; is that correct?

A. Indirectly. It is determined by his immediate superior.

Q. The district manager?

A. The district manager or the branch manager.

Q. And they recommend to you the amount that these men are to receive; is that correct? [138]

A. Not as individuals. The payroll changes are made and the payroll approved by myself, as a whole.

JAKE M. GRATZ

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Kennedy: Your full name, please?

The Witness: Jake M. Gratz.

Q. (By Mr. Mouritsen) Where do you reside, Mr. Gratz? A. 521 Woodruff Avenue.

Q. In the City of Los Angeles? A. Yes.

Q. And what is your business or profession?

A. I am branch manager for the Los Angeles Evening Herald and Express.

Q. How long have you held that position?

A. About—a little over 14 years.

Q. And you are at present branch manager in what is known [139] as the southwest district?

A. Yes, sir.

Q. Could you describe briefly the geographic bounds of that district?

A. Well, on the west side of town I go from Jefferson Street to Manchester, and from Broadway to Crenshaw Boulevard; and in the east part of town I go down as far as 12th Street, down to the River and over to Manchester Boulevard on the south.

Q. And does all of that territory lie within the city limits of Los Angeles? A. Yes.

Q. What are the names of the district man-

(Testimony of Jake M. Gratz.)

agers who work under your supervision in that district?

A. Well, there is Ernest Brooks, Jack Fracht, Bernard Reinshieber and Harry Plotkin.

Q. Is that all of them?

A. That is all.

Q. What, if any, work does a man named Abels do for you, or Abel?

A. Well, Abel is more or less my assistant, and he handles—he is usually a relief man if anyone is sick, and he takes charge of special events like the Coliseum when they have big football games or any special features over there, and he looks after the baseball park and things like that of a spe- [140] cial nature that come up.

Q. And does a man named Harrison work out of your office?

A. Harrison? No, he doesn't work out of my office.

Q. Now, who places these boys upon the various corners within your district? Do you do that?

A. No, the district manager.

Q. As a general practice, during what hours are the papers sold in your district?

A. Well, they have regular press times. Some days the presses are later and some days they are earlier; never any certain time. I get my papers some mornings at ten after 10:00 and some mornings, I may get them at twenty minutes to 10:00. There is an established press time as a rule.

Q. Do you have any instructions from the circulation department regarding the hours at which

(Testimony of Jake M. Gratz.)

you are to have representation of the paper in your district?

A. No, I don't have no instructions as to that. [141]

ALBERT W. BREWSTER

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Brewster? A. 901 Balboa Drive, Arcadia.

Q. What is your business or profession?

A. I was district manager first, and a branch manager now.

Q. For the Herald-Express?

A. That is right. For the Los Angeles Evening Herald-Express.

Q. How long have you been a district manager?

A. I have been a branch manager for 15 years.

Q. And in what district are you now a branch manager?

A. What is known as the Hollywood Branch district, which extends from the Los Angeles River bed to Los Angeles City proper, and then skips from there to Beverly Hills district, a straight chute through on perhaps Wilshire Boulevard, straight through to Beverly Hills.

Q. And what is the northern boundary, if there is one?

(Testimony of Albert W. Brewster.)

A. The northern boundary would be the Hollywood Hills, or perhaps it is indefinite; north of Sunset Boulevard and midway between Riverside Drive. There is a district in there that is cut and it is irregular. There is no line to be follow- [142] ed particularly.

Q. What are your duties as branch manager for the Evening Herald-Express?

A. To oversee the district managers, take care of accounts for the Evening Herald Publishing Company, keeping them straight for the district men and for the company; that responsibility is mine; and to see that the newspapers are properly taken care of in the area considered the Hollywood Branch.

Q. And what do you mean when you say that your duties include seeing that the newspapers are "properly taken care of"?

A. Seeing that the district men start on their times, on their routes, seeing that their corners are filled properly through them.

Q. And what do you mean by your statement that you are seeing that the corners are properly filled?

A. They report to me during the day that things are running right. They come into the branch office and report that way.

Q. Well, what does that——

A. (Interrupting) If there is anything out of the ordinary, they take care of it—if it is called to their attention, they take care of it.

(Testimony of Albert W. Brewster.)

Q. Well, is that anything out of the ordinary in the circulation—— [143]

A. (Interrupting) That is not.

Q. (Continuing) ——of the——

A. That is not. That is the regular routine.

Q. Well, please explain what you mean by their coming in and telling you that things are all right. They are all right with reference to what?

A. With reference to the work that they are supposed to do.

Q. All right.

Now, what work are district managers supposed to do?

A. The same as any other district managers. Seeing that the corners are supplied with papers, that the wholesalers have the proper amount of papers so that they may wholesale properly to the boys on those corners.

Q. What other duties do the district managers have?

A. That is the limit of their—except for the collection of the money.

Q. During what hours do they work in your district?

Trial Examiner Kennedy: Was the last question answered?

The Witness: Not yet. Forty hours a week.

Q. (By Mr. Mouritsen) And is that a 5-day week or 4? A. That is a 6-day week.

Q. And during what periods of the day are district managers [144] supposed to see that the paper

(Testimony of Albert W. Brewster.)

is properly displayed and represented in that district?

A. Mainly during the busy time of the day when the larger sale is to be made, reporting in at noon, perhaps, and quitting at 7:00 o'clock in the evening —something of that order.

Q. And in your district you require that the papers be displayed as represented during those periods?

A. Displayed in the usual way, yes. The usual way.

Q. What do you mean by "the usual way"?

A. There is an agreement having been made between the Evening News and the Evening Herald-Express in which the Evening Herald is carried on the inside of the boy's arm; the Evening News is folded and displayed on the outside; and that is the condition under which we work.

Q. Your instructions to the district managers are to see that those conditions are carried out; is that true? A. Yes.

Q. They check the newsboys upon that display, is that correct?

A. Well, it is the customary procedure to see that the display is made properly in that manner, so that the two papers get what we consider an even break.

Q. And as a matter of fact, isn't that agreement to the [145] effect that the Heralds are to be held out in the right hand of the newsboy?

A. I know of no such rule.

(Testimony of Albert W. Brewster.)

Q. Will you explain therefore more fully the understanding that you have of the manner in which the newsboys are to display the respective papers?

A. I have already explained to you as far as I can. They are displayed one upon the other—one folded and the other open.

Q. Now, which paper is to be folded?

A. The Evening Herald remains upon the inside, open.

Q. By the inside, what do you mean?

A. Inside the arm next to the body, and the News on the outside of that.

Q. And it is to be folded; is that correct?

A. The News is to be folded, yes.

Q. How is that folded? In what manner?

A. That is not anything concerning me, and I do not know. It can be folded front page out or inside; it makes no difference to me on that score. There are no orders given on that that I know of.

Q. Now, with reference to the time that the district managers make their first coverage of their districts, what, in general, is that time?

A. Do you mean the district men, their duties to start at a [146] certain time, or do you mean that the papers have been there before the district men go to work?

Q. In general, what time do the district men make their first coverage of the various districts?

A. Perhaps 2:00 o'clock in the afternoon.

Q. Who are your district managers?

A. C. M. Wheeler, H. E. Beebe, William Chance,

(Testimony of Albert W. Brewster.)

Fred Barrows, L. K. France, H. J. Hapburn, F. E. Brya, William Jackson, Ed Vaughn.

Q. Now, do all of your district managers make their first—cover their districts for the first time at 2:00 in the afternoon?

A. Approximately, yes.

Q. Are there any instances in which the district managers cover their districts prior to 2:00 o'clock in the afternoon?

A. Probably Saturday morning only, unless in the case of an emergency when the newspapers are running extras, or something of that order. Then they would, as in a case, say, like yesterday, for instance; a man would go to work perhaps two hours earlier in the period.

Q. (By Mr. Mouritsen) I mean a case such as yesterday.

When they go to work two hours earlier, how are the newsboys notified as to the time when the newspapers will be dis- [147] tributed by the district manager?

A. The newsboys have their regular time there, are already on the corner; the boys are already on the corners and the district man supplies their wants when a case of yesterday—such as yesterday happens.

Q. Well, is your testimony to the effect that the newsboys are all on their corners prior to two o'clock in the afternoon?

A. As a rule, those that are all-day men are on those corners.

(Testimony of Albert W. Brewster.)

Q. And how long prior to 2:00 P. M. are they usually there, then?

A. Well, press time starts downtown, it is quite a distance to go until they first pick up mine; perhaps 10:30, I will say, is the starting time as a rule. There is no set rule for them. They are on their own. It is up to them to be there if they want to make any compensation for themselves.

Q. When do the district managers take the papers around the first time?

A. That approximately is around 2:00 o'clock. The papers have been delivered through a system of delivery up to that time without the supervision of the district managers. Does that clarify your point?

Q. That is what was bothering me. What is your method of distribution that takes place from approximately 10:00 or [148] 10:30 until 2:00 o'clock, in your district?

A. That is all pre-arranged. They know exactly what they will sell within a given time up until the rush period, and that is delivered to their corners and they can come and pick them up at any time and sell them. There is no set time for them to pick them up. They are laid for them, and if they can sell them, it is their business to sell them. They are laid there for them on pre-determination by——

A. Through cooperation of the man on the corner and the district manager. They know about what their needs will be and the number of papers needed

(Testimony of Albert W. Brewster.)

is articulated and they are dropped on the corners for them.

Q. By whom or by what person?

A. By the district man—what do you mean? Dropped on the corners?

Q. Yes. Who puts the papers out in your district between 10:30 in the morning and 2:00 in the afternoon?

A. Well, it is pre-determined between the district man and the wholesaler on the corner just what that corner will do in those hours, and supervision is not needed on those sales. Those papers are dropped on regular order to those corners.

Q. I am not interested in the supervision at this time. I want to know who takes those papers around between 10:30 in the morning and 2:00 o'clock in the afternoon? [149]

A. A regular delivery service that drops them on a stipulated drop order, That order don't vary.

Q. What is the means by which they are dropped there?

A. Those are regular drivers that drop those there. They are not district men; they are regular drivers.

Q. And in the event that the newsboy is not on his corner when those papers are delivered, what occurs, so far as you are concerned?

A. Nothing occurs. The boy has no set time to arrive at those corners. He is not ordered to come at any set time. The papers are there that he has agreed should be sold on those orders, and he gets

(Testimony of Albert W. Brewster.)

there in his own good time whenever he feels he wants to get there. 10:30 could be the approximate time.

Q. In the event he is not there, which has occurred in your experience, has it not——

A. (Interrupting) That is right.

Q. And recently?

A. Yes—just now, in fact.

Q. What happens to those papers?

A. Well, as a rule the wholesaler will know a day in advance whether he wants to be off that corner. He asks for relief for that day or that portion of the time of the day he wants relief, and we have someone there to sell them for him. The profit then goes to the man selling the papers and not to [150] the man off the corner, and that is the request purely of the man on the corner.

Q. And in the event the papers are delivered and the newsboy does not appear to obtain them, and the papers are stolen, what do you do then?

A. The district manager and myself, we adjust that. If the papers aren't there, the boy simply can't sell them. We credit him for the papers that did not arrive. If the papers don't arrive you can't charge them. There is no sale for them.

Q. In the event, as it has occurred recently in your experience, that a newsboy has not appeared at the corner at a time when the papers are delivered——

A. (Interrupting) I haven't had any called to my attention recently, no.

(Testimony of Albert W. Brewster.)

Q. Has that occurred in the last several years?

A. Surely.

Q. And what action did you take when that occurred?

A. We attempt to pick up the papers and pass them around to the corners that could help sell them. If any sale is made, we credit that corner with the particular sale. Nobody is held responsible in a case of that sort.

Q. And have you removed any newsboys from their corners for failing to appear?

A. I have not.

Q. You have never done that? [151]

A. I never have, no, sir.

Q. At the present time, are newsboys in your district permitted to return all unsold copies of the paper?

A. That is a question that takes a lot of answering.

Q. Well, answer yes or no.

A. I can't answer yes or no.

Q. You answer yes or no, and then make your explanation, if you want.

A. I will have to answer it No.

Q. They are not? A. They are not.

Q. Now, make your explanation.

A. We are 17 miles in some places from the main printing plant. We have an established order. I mean that is established, that that number of papers are to be dropped on that corner during the

(Testimony of Albert W. Brewster.)

day. The sale has been established and we know from experience what that corner will do. And before the last edition is made of the day, we make the rounds and determine from the boys on the corners whether they need extra papers to carry them on to the time they have in mind of quitting. We supply the extra papers at that time, but the standing order is a permanent order based upon experience.

Trial Examiner Kennedy: Well, now, your principal answer was that they can return unsold copies, or cannot?

The Witness: No. [152]

Trial Examiner Kennedy: They cannot.

The Witness: In this particular case, Mr. Administrator, they are so far from the plant that we cannot make an extra run. It isn't like downtown where you can make an extra run. We have to make the last round so the boys can apply to the plant for the papers necessary to keep the corner supplied; just the amount of papers it takes to finish them during the night. If they have over-estimated their allotment, that is their business. That is where the wholesaling end ends and they pick up.

Q. (By Mr. Mouritsen) Well, in other words, if they have a bad sale, then they are——

A. Well, that is qualified, too. If they have a bad sale, we take the papers back off of their hands and allow them full credit. We allow the man to operate his own business as far as he thinks his

(Testimony of Albert W. Brewster.)

needs and wants are concerned. If we add extra papers to that account, we take them back, whatever he may have left on his hands. Anything extra is taken off the boy. We allow the boy to adjust his order, and it is his business. He can do that the last thing in the day.

Q. Who determines when——

A. (Interrupting) The man on the corner determines that.

Q. I mean, who determines that he shall be given, for example, extra copies above the order?

A. The district man has them available for the men on demand. [153]

Q. Who determines it?

A. There is no determination made except the man on the corner.

Q. Is it your testimony that in no event is a newsboy given extra editions of the paper unless he orders them?

A. What is that question again?

(The question referred to was read by the reporter, as set forth above.)

The Witness: I will say No to that question. The boy may not be on the corner, and papers may be dropped there for him.

Q. (By Mr. Mouritsen) And is it your testimony that in every case where extra copies of the paper are given to a newsboy that he is allowed full returns on those extra copies?

(Testimony of Albert W. Brewster.)

A. It is the Hollywood Branch policy, yes. When he is given extra papers above his order and he can't dispose of them, he gets full credit for them.

Q. And who determines whether or not he shall be permitted returns in the event that he has a bad sale?

A. I determine that, or the district manager, on his recommendation.

Q. How late in the day do the district managers under your supervision work?

A. It varies. The last one, perhaps, is 8:30 at night. They start dropping off from 6:30 to 8:30 at night. I don't believe any of the men go home before 7:00 o'clock in the evening. [154]

Q. At the close of each day, do they check in to the branch office with their collections?

A. No. They check in the following morning, the space between the time they come to work and the time they make their first round in the district, they take time enough to straighten up their accounts.

Q. And when do they make the last reports to you that everything is all right in the district?

A. Well, the last reports I receive are perhaps half past 5:00 or a quarter to 6:00 in the evening. That is the last report I have.

Q. Now, after that time when they make such reports, do they again cover their districts?

A. They do.

Q. And with what edition of the paper, if any, do they do that?

(Testimony of Albert W. Brewster.)

A. They carry the races or 7-Star final at that time of the day.

Q. Do the district managers under your branch in each instance secure the later editions of the paper from the branch office? A. They do.

Q. And after this last time when they take papers around the district, they do not report back to the branch office?

A. Not until the following day. [155]

Q. The papers in your district are furnished to the newsboys at 3 cents a copy; is that correct?

A. That is correct.

Q. Were you district manager or branch manager in the Hollywood District during the year 1937?

A. I was.

Q. Do you recall the time, that is, on or about November 1, 1937, when the price of the Herald and Express to the newsboys was changed?

A. I do.

Q. How was that change in price made known to the newsboys in your district?

A. It was fully publicized for a week that the price change would be made upon this certain date, and they all knew of it, the time it was to be made, and that the new wholesale rate went in.

Q. And when you say it was publicized, what do you mean by that?

A. I mean it was given advertising space. We published a little pamphlet or dodger that we sent around to the boys showing the price.

Q. And do you give any instructions to the dis-

(Testimony of Albert W. Brewster.)

trict managers regarding change in price that they were to——

A. (Interrupting) They were to adjust their orders fully.

Q. The district managers? [156]

A. The district managers were to adjust their orders fully with the boys upon the corners until such time as the order became stable.

Q. At or about that time, namely, November 1, 1937, the newsboys in your district also commenced to handle the News; is that correct?

A. That is correct.

Q. Now, how were the newsboys informed of that fact, if you know?

A. The Evening News took it upon themselves to notify most of our boys of their own accord he was available for them, and they had to make their own contacts, which they did.

Q. Now, did you talk to any of the district managers under your supervision regarding that change?

A. I told the district men that at such a time the Evening Herald newsboys would be allowed to handle the Daily News—the Evening News.

Q. And what instructions, if any, did you give regarding the manner in which the News and the Herald, respectively, were to be displayed?

A. Just as I have stated before, the News folded on the outside, the Herald on the inside.

Q. That is what you told the district managers?

A. That is correct. [157]

After Recess

(Whereupon the hearing was resumed, pursuant to recess, at 1:30 o'clock P.M.)

ALBERT W. BREWSTER,

the witness on the stand at the time of recess, resumed the stand and was further examined and testified as follows:

Direct Examination (Continued)

Q. (By Mr. Mouritsen) Mr. Brewster, these check men or wholesalers are in the main what are known as main spot boys; is that correct?

A. They have the most advantageous corners, yes.

Q. And the expression "main spot boy" is an expression known and used in the business of circulating newspapers, is it not?

A. Well, it may be used in the downtown area; not on the outside.

Q. In other words, that is not——

A. (Interrupting): That is not as a rule on the outside.

Q. But these check men or wholesalers count out papers to the other newsboys who come to them; is that correct?

A. That is right. And keep their accounts so that they know where they stand.

Q. And then at the end of the selling period, they make the collections for the papers they have counted out?

A. That is right. [160]

(Testimony of Albert W. Brewster.)

Q. Now, those check men or wholesalers give the papers to the boys, the other newsboys, and collect for them at the rate of 3 cents a copy?

A. That is correct.

Q. And those boys who receive their papers from the check men or wholesalers get their copies at the same rate as the wholesale price?

A. The established rate.

Q. Other than newsboys or school boys who obtain their papers and sell for only a couple of hours a day practically all the newsboys in the district under your supervision receive checks from the Evening Herald and Express, do they not?

A. No. You mean the wholesaler only receives the check. The wholesalers only receive a check in the Hollywood district.

Q. There are a number of all day hustlers in your district who do not receive it?

A. Some; not many.

Q. In some instances do those all day hustlers count out papers to other newsboys?

A. Not unless he is asked to relieve the man—wholesaler. Not unless he is asked to relieve the man who is on the job.

Mr. Mouritsen: I think that is all.

Cross Examination

Q. (By Mr. Compton): Mr. Brewster, to clarify your testimony [161] of this morning concerning the lapse of time between the beginning of the working day for the district man and the time when papers

(Testimony of Albert W. Brewster.)

are first delivered to corners, will you please explain just exactly how the first edition of the Herald and Express is delivered on any particular day?

A. The established orders for the Green Flash and the Evening News, which are the morning editions, are laid on the corners wrapped or tied for the convenience of the boy when he may arrive on the spot, and that has nothing to do with the district man's job until after 12:00 o'clock. That is made by the transportation department delivery alone, and it is an established order.

Q. Do these bundles bear addresses?

A. Some of them bear addresses. If they are wrapped and rolled from the main plant, they bear addresses. Otherwise it is a predetermined order and is tied up as such, but the driver making the delivery follows the regular list with the boy's name upon it.

Cross Examination

Q. (By Mr. L. B. Binford) In response to one of the last two or three questions, Mr. Brewster, you used the term "Evening News." Didn't you mean the Latest News?

A. Latest News is our second edition. If I said that is the Evening News, it is an error. It is our latest news edition. [162]

Redirect Examination

Q. (By Mr. Mouritsen) This may have been covered, but I am not certain.

(Testimony of Albert W. Brewster.)

These drivers to whom you referred in your last answer or two, from where do they operate?

A. They operate from the branch offices, but in the early part of the morning they operate from the main plant to these different areas into which the papers go at that time.

Q. I see.

And do those drivers also make deliveries to the spots where you have an all day hustler?

A. They make deliveries to all spots that might be over their route.

Q. Now, you have referred to an established order that they deliver.

Will you please explain that term?

A. For the purpose of convenience to the boy upon the corner, we have arrived at a figure for the sale of papers during that allotted time until the next edition, and it is laid there upon the corner waiting for him, and it is pre-determined by him, can be raised or lowered at his will, because there is no supervision of that. It is marked as an established order until such time as he himself changes it. [163]

Q. On that established order—strike that.

When was that order established?

A. Well, as far as I know, or as long as my experience has been there, which has been twenty-eight years, it has been a standing order of that sort.

Q. And on this established order, do I understand correctly that the newsboy is not permitted returns?

(Testimony of Albert W. Brewster.)

A. That is not true. The newsboy is permitted—allowed returns, or a change in his order, at any time that he sees fit.

Q. No. The thing that I desire to find out is, is the newsboy permitted to return unsold copies of this established order in your district?

A. As explained to you before, if the boy has the papers left over in the evening in such quantity that it is necessary for him to ask for credit, yes; otherwise, no.

Q. Well, who determines whether he has sufficient left over that he is justified in asking for credit?

A. I determine that. In the statement to you a while back, I said it is up to me or the district manager to O. K. the credit.

Q. Has the situation arisen where a newsboy has not maintained this established order—has not sold as many papers as experience would lead you to believe the corner could sell?

A. Regularly or occasionally? [164]

Q. Regularly? A. No.

PATRICK COMORRE

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Kennedy: Your name, please?

The Witness: Patrick Camorre, C-a-m-o-r-r-e.

(Testimony of Patrick Comorre.)

Q. (By Mr. Mouritsen) Where do you reside, Mr. Camorre? A. 1808 Kemper Street.

Q. In the City of Los Angeles? [165]

A. Yes, sir.

Q. What is your business or profession?

A. Well, I am—I have been an organizer in the past. At present I am secretary of the organized Newsboys Union.

Q. And during what period were you an organizer for the Newsboys Union?

A. From July, 1938 to July—the latter part of July in 1939.

Q. And when I refer to Newsboys Union, you will understand that in every instance I refer to Los Angeles Newsboys Local Industrial Union No. 75, Los Angeles, California, C. I. O.; is that right?

A. That is correct.

Q. Now, in your position as organizer, did you become familiar with the history of the organization of this Newsboys Union?

A. I have. I may state further that I was working directly under the California State Director of the C. I. O. when the charter was issued to the Newsboys Union.

Q. And that was approximately what date?

A. When the charter was issued.

Q. When the charter was issued?

A. Well, there is two different charters. The name of the organization to the C. I. O. has been changed from time to time. It used to be the C. I. O.,

(Testimony of Patrick Comorre.)

Committee for Industrial Organization; it is today "Congress of Industrial Organi- [166] zations."

Q. When was the original charter issued for the Newsboys organization?

A. Well, I believe—I am not very—I would not say accurately, but I believe it was 1937, probably—well, the latter part of 1937, to be sure.

Q. Now, can you give us briefly a history of the organization of the Newsboys Union?

A. You mean how it is set up?

Mr. Compton: Confining himself, I presume, to his personal knowledge?

Mr. Mouritsen: Yes.

The Witness: Well, the Newsboys Union was organized first by a group of boys that wanted to be organized into an organization. They asked for a charter from the C. I. O. office—to the C. I. O. office, and the regular procedure where there was no International, which in this particular field there was no International, the C. I. O. gave out industrial union charters affiliated to the C. I. O. in Washington, D. C., and that is the way the application for the Newsboys Union was made.

Now, the set-up is something like this in this particular Local——

Trial Examiner Kennedy: Mr. Witness, as long as you are going into that particular narrative, I think dates are very [167] important, so if you will tie up your story with when these particular events happened, I think we would like to have that.

(Testimony of Patrick Comorre.)

The Witness: When the newsboys first organized, it was around approximately in May of 1937, and like I said before, it was sometime later before a charter was issued to them, although they had made application immediately after that. It was the Committee for Industrial Organization—they were affiliated directly to the Committee for Industrial Organization up until the 16th day of November, when there was issued another charter that supplemented the other one——

Mr. Hall: What year?

The Witness: The 16th day of November, 1938. That is when this charter here that is now the Congress of Industrial Organizations was issued to us. This is a photostatic copy of the charter.

Q. (By Mr. Mouritsen) Well, just continue, or tell us what happened in the history of the organization with reference to what newsboys selling what papers organized, and——

A. (Interrupting) Well, the Union was made up of newsboys selling the Los Angeles Herald and Express, the Evening News, the Daily News, the Los Angeles Times, the Los Angeles Examiner, and the People's World.

Q. Do I understand correctly that the Union first received a charter sometime in the latter part of 1937; is that cor- [168] rect?

A. Well, I would say around August or September. I could tell you exactly—it was around about that time, August or September of 1937, when they got the charter.

(Testimony of Patrick Comorre.)

Q. Well, they operated under that charter until November 16 of 1938 when they received the charter under which they now operate; is that correct?

A. That is right.

Q. And the new charter was issued to take care of a change in the name of the organization, that is, from Committee for Industrial Organization to Congress of Industrial Organization?

A. That is correct.

Q. Was there any change in the organization or set-up of the Union at the time when it received the new charter?

A. No, only that there may be some little—as a set-up, no, but there probably were a few little changes in the by-laws that did not amount to a whole lot. It was practically the same set-up, but in order to change the name on the constitution they did make a few little changes that were taken up at that convention, the local industrial unions. [169]

Q. Will you explain, Mr. Comorre, at this time the set-up of the—of the organization of the Newsboys Union with reference to the manner in which it operates, the officers and the various subdivisions, if any?

Mr. Hall: You mean at the present time, Mr. Mouritsen?

Mr. Mouritsen: At the present time.

The Witness: Well, the Newsboys Union is made up of newsboys, as I said previously, that sell these various papers. They have elected officers, which

(Testimony of Patrick Comorre.)

consist of the president, the vice president, secretary —that is, financial secretary—the trustees, sergeant at arms, and executive board members from various units, which are units of the Herald and Express newsboys, which in most cases are the same as the News newsboys, and the—including the Morning News; the News now is changed. Before it was the Daily News and the Evening News, but today we have changed it when the paper made a change and called it all the same thing; the Los Angeles Times, the Los Angeles Examiner, and the People's World unit.

Now, each unit elects an executive board of directors from their unit to represent them on the executive board, with the officers of the Union. [173]

Q. (By Mr. Mouritsen) Now, Mr. Comorre, during the period while you were organizer of the Newsboys Union, did you attend the meetings of that Union? A. I did.

Q. And during that time, at any of these meetings you atten- [178] ded, were various officers of the Union elected? A. Yes, sir.

Q. And from what men were these officers elected? A. From the members. [179]

Q. (By Mr. Mouritsen) And during the period while you were organizer, were there various committees of the Union? A. Yes, sir.

Q. Will you name those committees, please? [180]

The Witness: Well, we have an Organizing Committee, the Sick and Benefit Committee, Sports Com-

(Testimony of Patrick Comorre.)

mittee, Legal Committee, the Activities Committee. I believe that is all.

Q. (By Mr. Mouritsen) And how were the members of these committees put into office—elected?

A. In most instances, elected by the members present at that meeting where it was decided to do that.

Q. And from what body, if any, were such committee members elected?

A. From the members of the Union.

Trial Examiner Kennedy: Let us dispose of this question [181] as to whether or not there is such a Union.

Mr. Witness, is there such a Union?

The Witness: Yes, sir.

Trial Examiner Kennedy: The one that is mentioned in the petition here?

The Witness: Yes, sir. [182]

Q. (By Mr. Mouritsen): Now, Mr. Comorre, do you of your own knowledge know at this time whether there are any officers of the Newsboys Union? A. If there are?

Q. If there are officers? [188]

The Witness: Yes, sir.

Q. (By Mr. Mouritsen): And at the present time, are there any committees of such Union?

A. Yes.

Q. And during the time while you were organizer for the Union, did you in such capacity ever meet with any representatives of the Los Angeles Evening Herald and Express? A. Yes, sir.

(Testimony of Patrick Comorre.)

Q. Did you meet alone or with other people?

A. Other members of the committee, members of the Union.

Q. And what committee?

A. Well, when we met with the H "ald and Express, in most instances it was the Grievance Committee, with the exception of maybe another officer, various other officers of the Union. There was in most cases, and I believe in all, some members [189] that were selling papers for that particular paper.

Q. During what period did you meet with representatives of the Evening Herald and Express?

A. Well, practically immediately after I was sent in as organizer of the Newsboys Union we started to meet with them. I believe I stated before in the record, that was July, 1938. After that time, up until practically July, 1939, I met at different times with various representatives of the Herald and Express.

Q. And during that period, did you meet on more than one occasion? A. Yes.

Q. Could you tell us approximately how many times you met with representatives of the Los Angeles Evening Herald and Express?

A. Well, I would like to understand the question better. Say, for instance, with any representative, any member in the capacity of an employer or representative of the paper?

Q. Well, I will restrict it to any of the executives, including Mr. Harrison or Mr. Keeler. I

(Testimony of Patrick Comorre.)

will first restrict it [190] to those two or any other executives.

A. Yes. Quite a few times we met with them.

Q. Well, can you specify any number?

A. I think I met with them—I was in the—Mr. Harrison, we met about—well, in his presence probably about five times.

Q. And any with Mr. Keeler?

A. I never met with Mr. Keeler myself, but the committee of the Newsboys Union—of course, you are asking me this question. I believe I had better state I never met with Mr. Keeler.

Q. Did I interrupt you there?

A. Shall I continue?

Q. Yes. Continue.

A. But I have met in the presence of Mr. Dunsmore, who is also a representative of the paper, and attorneys for the Herald and Express.

Q. Mr. Compton?

A. Mr. Compton and Mr. Mount; Robert Mount, I believe.

Q. Now, can you just tell us in general what subjects you as an organizer took up with representatives of the Evening Herald and Express on such occasions when you met with them?

A. With Mr. Harrison, it was mostly—when we met with Mr. Harrison, the Committee and myself, it was on the question of grievances; and the first time that I met with Mr. Compton [191] and, I believe, Mr. Dunsmore in regard to the Herald and Express in Mr. Smith's office of the News was on

(Testimony of Patrick Comorre.)

the question of bargaining rights, because we were asking for bargaining rights and we were there to negotiate a contract with the News where Mr. Compton and these people were present. That was one meeting, and previous to that we had met at various times with a number of the representatives from the publishers, all of the publishers, most of the publishers with the exception of the Los Angeles Times; that is, at that time.

Q. Well, then, in order to complete the record, did you, during the period while you were organizer for the Newsboys Union, meet with representatives of the News—that is, the paper published by the Stockholders Publishing Company, Inc.?

A. Yes, sir.

Q. And who were those representatives?

A. Well, Mr. Smith and Mr. O'Brien, and Mr. Reichert—Lee Reichert.

Mr. Mouritsen: Could we have a stipulation regarding the position of Mr. Smith with the News?

Mr. L. B. Binford: Yes, sir.

He is General Manager of the News; vice president of the Stockholders Publishing Company.

Mr. Mouritsen: And Mr. O'Brien?

Mr. L. B. Binford: Mr. O'Brien is circulation manager. His full name is Dutton O'Brien. [192]

Q. (By Mr. Mouritsen): Was there another representative of the News?

A. Lee Reichart was present several times.

Mr. L. B. Binford: He was formerly a street

(Testimony of Patrick Comorre.)

supervisor, but is not with the Stockholders Publishing Company, Inc., at the present time.

The Witness: That is right.

Mr. Mouritsen: Thank you.

Q. And from time to time while you were organizer for the Newsboys Local Union, did you meet with the representatives of the Los Angeles Examiner? A. Yes, sir.

Q. Will you specify, please, those people representing the Examiner?

A. Well, as much as I can remember was Logan and Mr. Black. That is on the question of bargaining and negotiating a contract. And with Mr. Goldberg on the question of grievances.

Mr. Mouritsen: Mr. Hall, may we have a stipulation re- [193] garding the position of Major Logan, who is with the Los Angeles Examiner?

Mr. Hall: This period the witness was speaking about was prior to July, 1939, was it not?

Mr. Mouritsen: I believe so.

Mr. Hall: At that time he was business manager of the Examiner.

Mr. Mouritsen: And Mr. Black during that period?

Mr. Hall: He was circulating director.

Mr. Mouritsen: And Mr. Goldberg?

Mr. Hall: Well, I cannot give you Mr. Goldberg's title, although I know that he was an employee of the Examiner.

Mr. Mouritsen: Thank you.

Q. Now, let me ask you, on these occasions

(Testimony of Patrick Comorre.)

when you met with representatives of the News —the paper published by the Stockholders Publishing Company, what matters were taken up by yourself with the Committee?

A. Well, we were there, and at the time when Mr. Smith was there, and also another representative of the News, and also another representative of the News, and also including representatives of the Herald and Examiner. We asked for the rights to bargain for the Newsboys Union, negotiate a contract. **[194]**

Q. Mr. Comorre, did you on or about December 19th, 1938, have a meeting with a number of representatives of the papers here involved?

A. Yes, sir. I believe that is the date; I would not be certain. **[195]**

Q. And where did that meeting occur?

A. Mr. Smith's office.

Q. Mr. Smith of the News?

A. The News, that is right.

Q. Now, who were present at that meeting representing the Newsboys Union?

A. There was myself as the organizer, and the Committee—what they call the Bargaining Committee.

Q. Will you give us those names, please?

A. Mr. Rothman, Mr. Schwartz, Mr.—there was a person named Fritz; I can't think of his last name. It was just on the end of my tongue.

Q. For the purpose of refreshing your recollection, let me ask you if it was Fred Gibson?

(Testimony of Patrick Comorre.)

A. Fred Gibson. We call him Fritz Gibson. Yes, that's right.

Mr. Cosgrove: What were the first names of the other two men?

The Witness: Ben Rothman, Louis Schwartz, Fritz Gibson. I don't know if A. B. Calls was there or not at that meeting; I don't know. We had some minutes of that.

Q. (By Mr. Mouritsen): Well, for the purpose of refreshing your recollection, let me ask you if Art Page was also present?

A. The secretary of the Union? Yes sir.

Q. Will you tell us who were there representing the various [196] papers? [197]

A. (Interrupting): Well, to be—I will try to remember them as best I can. Mr. Compton was there from the Herald, Mr. Harrison, and one of the Hearst boys. I think it was Wallace Hearst. I don't know if he was representing the Examiner or the Herald, but he was there. Then there was Mr. Logan, and that is all I can remember as far as the Examiner is concerned. I believe it was Mr. Logan. And from the News, it was Mr. O'Brien and Mr. Smith. I don't know if Mr. Dunsmuir was there or not. I believe he was.

Q. Let me ask you if Mr. Powell was there.

Was Mr. Powell there representing the News?

A. The News? Well, I don't remember what the man's name was. There was more than I can remember—a few more, but I don't remember who they were; I don't know their names.

(Testimony of Patrick Comorre.)

Q. (By Mr. Mouritsen): Now, will you tell us, Mr. Comorre, [198] just what was said and done at that meeting, so far as you can recall?

A. Well, as much as I can recall, we started out something like this, I believe, after——

Q. (Interrupting): Will you please, as far as possible, give the name of the person who said anything.

A. Well, O. K.

I started out, I believe—I said, "I guess we might as well get going and get this thing over with."

I said, "I see there is a lot of people here, and according to my letter to the News I was sort of surprised to see them all here because the letter we sent you— I am speaking of Mr. Smith—was for the purpose of negotiating a contract, to meet with us for negotiating a contract, and I came down here today and I find that the whole bunch is here from most of all the papers, and it is the same old story as we have gone through before. We have been meeting with everybody and we have never got nowhere, so we are going to have to start to ask you to bargain with us separately, and then of course"—that is the way the discussion was started.

Well, then there was a question—I think Mr. Compton raised the question, did we—he thought that we was—he was—a letter was sent to him, I believe, by the News notifying them of this matter, that we wanted this particular meeting, and he was under the impression that we wanted to in-

(Testimony of Patrick Comorre.)

I believe the Herald and one of the representatives from the Examiner spoke the same way, to meet with all of them, and I made it very clear that we did not want to meet with all of them at one time, as we have in the past, because we never got nowhere, and from now on we were going to meet separately, either to sit down and negotiate a contract with us or else make out a refusal so we could file a case with the Labor Board and later show reasons why we should be allowed. And then Mr. Compton wanted—I think it was something about a stipulation made that they would—or was it Mr. Smith? I believe—yes, Mr. Smith says that until the newsboys were certified as employees, that he would not agree to negotiate a contract. Now, that is—and I asked him if he would send that refusal to me in writing, and he said that he would. Then, of course, we discussed—then of course we decided that the—I mean—it was probably decided before I made that particular request to Mr. Smith that the other papers would be excluded from that meeting, only as visitors, that they would not participate in anything that might take place there.

And of course, previous to that, Mr. Compton, who was representing the Herald, made it very clear that they would not negotiate a contract until—or consider negotiating a contract until it was decided whether the newsboys were [200] employees by the National Labor Relations Board for bargaining purposes.

(Testimony of Patrick Comorre.)

Q. And did Mr. Logan, or Major Logan, in that case say anything regarding the position of the Examiner in that regard?

A. Not at that meeting, but—not at that meeting. That is what we are—that is the question, I believe.

Q. Well, after that time, did you have any further meetings with representatives of the Examiner?

A. I don't remember exactly if it was after that time, but I know that we had met with Mr. Logan at Logan's office. I was up there at least two times that I know of.

Q. Well, did you ever have a meeting with Major Logan of the Examiner, in which the question of bargaining rights came up or was discussed? A. Yes. Yes.

Q. When did such a meeting occur, if you recall?

A. Well, it was before—it was before the meeting of—that I just spoke of, on December 19th, and I don't remember so well. Maybe it might have been once afterwards, too. In fact, we took up a different question, and we asked him some questions at that meeting with them. Let me rest a little bit and refresh my memory. [201]

Redirect Examination

Q. (By Mr. Mouritsen): During the period while you were or- [206] ganizer for the Newsboys Union, did you in such capacity ever meet

(Testimony of Patrick Comorre.)

with representatives of the Times-Mirror Company, publisher of The Los Angeles Times?

A. I did.

Q. Did you do that on more than one occasion?

A. One occasion with the—well, we will say the executives, and in several instances maybe district men or something like that, to take up grievances, small grievances.

Q. And approximately when did you meet with the executives of the Times-Mirror Company?

A. Well, if we can remember when they made their cut on The Times from four cents to three and one-half to newsboys, it was immediately after that. That was really the purpose of going up there.

Q. (By Mr. Mouritsen): And where did this meeting take place?

A. At the Los Angeles Times, in one of the offices of the [207] Los Angeles Times; I believe it was Mr. Adams' office or someone representing The Times. Mr. Adams, attorney for The Times —I believe that was the name. It was probably at his office, I assume.

Q. Well, it was in The Times Building, where The Times is published?

A. It was in the Times Building; that is right.

Q. And who were present representing the Newsboys Union, besides yourself.

A. Besides myself, there was Mr. Page, who was secretary at that time, and also a Times hus-

(Testimony of Patrick Comorre.)

tler, and Mr. Dyche, who was also a Times hustler, and Mr. Barr, who was at that time a Times hustler.

Q. And who, if anyone were present representing the Times-Mirror Company?

A. Well, I believe it was Mr. Marks, Ray Marks. I believe that is the name he gave, and Mr. Cohen.

Q. Is that Jerry Cohen?

A. Well, I imagine that is who it was. I think that is his name, Jerry.

Mr. Mouritsen: Could we have a stipulation as to the position that Ray Marks holds with the Times?

Mr. Cosgrove: Yes. I will get the exact title. Circulation Manager.

Mr. Mouritsen: And Jerry Cohen? [208]

Mr. Cosgrove: Supervisor of street sales, and Richard Adams is an attorney in the employ of the Los Angeles Times and devotes all of his time to that employment, and has offices in the Times Building at First and Spring.

Q. Now, will you state what was said at that conference, giving as nearly as you can the name of the person making the statement?

A. Well, after we got seated there, we all got seated around, Mr. Adams, I believe, says, "Well, Mr. Comorre, I am afraid that you will have to start off here because we never had much experience with this kind of business, and we are not familiar with what the procedure is."

(Testimony of Patrick Comorre.)

And I said, "Well, I will be glad to," and we started off with the question of taking up the grievances on the cuts on the paper, that is, commissions to the newsboys who were selling the Times. Well, we discussed it back and forward, and it finally ended up after a general discussion on all these particular things, why we thought the newsboys should not have been cut, on account of their earnings were small, and so forth and so on, and it ended up with Mr. Page, I be- [209] lieve he asked a direct question, what was the reason for the cut, and I believe Mr. Adams said, well—a pretty frank question, or admission, rather; he says, "Well, so the Times will make more money."

[210]

I said, "Well, that is what I thought it was for, but I didn't know."

That was about the end of it. And we also mentioned we would like—I think I mentioned something about—I think we took up several little points in regard to some newsboy and we were trying to get along, and they agreed that we should, and I think it was decided—I said, "How will we take up the matter of some small grievances if they arise?"

And I believe Mr. Marks, or Mr. Adams, I don't remember well, but we finally agreed any small grievances could be mentioned to Mr. Cohen or the district men—Mr. Cohen would be glad to iron out any little grievances that arose until such time as we were able to sit down and negotiate a contract

(Testimony of Patrick Comorre.)

and have these things in a contract that would cover those things.

Q. Now, I believe you stated that you had met with Major Logan of the Examiner on other occasions than on this date of on or about December 19, 1938.

A. Yes. We had met before that. I believe the first time [211] that I was representing the Newsboys Union immediately after I became the organizer of the Newsboys Union, with a committee we were down there to see Mr. Logan. We met with this group again of representatives from the various papers at the Examiner office. I am pretty certain it was—yes, it was at the Examiner office. We had also present a man from the Pacific Labor Bureau with us.

Mr. Cosgrove: I discover that we do have here now the exact date on which the price of the Los Angeles Times was changed to the newsboys. It was February 9, 1939 for the daily, and February 26, 1939 for the Sunday.

Mr. Mouritsen: Thank you, sir. I will accept that stipulation, if it is offered as a stipulation.

Mr. Cosgrove: Yes, it is.

Mr. Mouritsen: Thank you.

Q. And, Mr. Comorre, with that information in mind, that is, that the price of the Los Angeles Times was cut on or about February 9, 1939 approximately how long after that time did the meeting take place? [212]

(Testimony of Patrick Comorre.)

A. Well, it wasn't very long after that. We were right after that.

Q. Well, a matter of days or——

A. Well, maybe a week or so, I imagine. I don't know exactly. I know we were pretty hot about it.

Q. Now, where did this meeting take place?

A. Which meeting now?

Q. That is the one that I believe you stated took place in the Examiner office.

A. I believe it was Mr. Adams' or Mr. Logan's office at the Examiner Building down there on South Broadway.

Q. And who were present?

A. Well, there was practically the same group that was meeting pretty regular with us, that is, that had been after that with us. I believe Mr. Harrison was there and Mr. Dunsmore, and I don't remember whether Mr. Keeler was there or not, and Mr. Compton was there, I believe. I believe Mr. Compton was there. I am not so certain about that.

I believe it was one of our first meetings and I didn't know them so well, and I know there were representatives there from the News.

I believe Mr. Smith was there. I know when we got down to business, there was representatives there from the Herald, the News, and the Examiner. I know there was representatives there. I don't recall their names so well, outside of Mr. [213] Harrison and possibly Mr. Compton. I can't remember the other ones' names. I am not sure Mr.

(Testimony of Patrick Comorre.)

Smith was there. I believe Mr. Smith was there, but I know there was representatives from the three papers there.

Q. Do you recollect Major Logan was there?

A. Yes, he was absolutely there.

Q. Will you tell us what was said at that conference?

A. Well, that is a long story. That is when I first came in the picture, just about when I first came in the picture, and the way I understood the newsboys explained to me that they had been meeting—had met several times—once or twice, or more times previously that way, and they never got down to any business; that is, they just met and just discussed everything in general, but they never had asked for any negotiations of a contract, or something like that; and I said, "Well, we'll get down to business," and we agreed there that we were not going to meet like this unless we really decided to get somewhere in regard to a contract, or something like that. And I think it was very shortly—it was not very long—we discussed a lot of things in general, but there was no definite negotiations in regard to a contract or anything like that.

Q. Do you recall anything that was said or done at that conference? [214]

A. Well, I think the question came up about the—I think Mr. Compton raised the question about the jurisdiction. In other words, whether the newsboys were employed. I believe that is where it was

(Testimony of Patrick Comorre.)

first mentioned after I came in the picture, that the newsboys were employees or not, and that they would not agree to negotiate a contract until such a time that they were certified as—that we were certified as employees by the Labor Board to negotiate a contract. I believe we agreed, though, that we could take [redacted] simple grievance which might arise from [redacted] could take it up with Mr. Harrison or Mr.—in fact, Mr. Harrison said we could take it up with him in case they had some grievances arise, that we come down and see him and iron it out in that way until such a time as this came about of certifying newsboys as employees, becoming bargaining agents for the newsboys selling papers. [215]

Wednesday, June 12, 1940.

Met, pursuant to notice, at 9:30 o'clock a. m. [235]

HARRY PLOTKIN

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name?

The Witness: Harry Plotkin. [237]

Direct Examination

Q. (By Mr. Mouritsen) Where do you reside, Mr. Plotkin?

A. 1831 West 78th Street.

(Testimony of Harry Plotkin.)

Q. In the city of Los Angeles?

A. The city of Los Angeles, yes.

Q. And what is your business or profession?

A. District manager of the Evening Herald and Express.

Q. And who is your immediate superior?

A. Mr. Gratz.

Q. That is Jake Gratz?

A. Jake Gratz, that is right.

Q. And he is a branch manager for the same paper, is that correct?

A. That is correct.

Q. Mr. Plotkin, will you tell us what your duties are in your position as district manager for the Evening Herald and Express

A. Well, my duties consist of supplying the men papers on the corners and collecting from them in the evening and going around and seeing that they are at work and covering the territory in general.

Q. And when you say you go around and see that they are working, you refer to the newsboys; is that correct? A. The newsboys, yes.

Q. Now, what are the hours that you work in your position? [238]

A. I go on duty at one o'clock and I am through at eight o'clock in the evening.

Q. That is one o'clock in the afternoon?

A. One o'clock in the afternoon. Pardon me.

Q. And do you yourself make delivery of papers to the newsboys? A. Partially, yes. [239]

Q. (By Mr. Mouritsen) Now, Mr. Plotkin, will

(Testimony of Harry Plotkin.)

you tell us in general what hours these newsboys work in your district?

A. Well, they generally start around ten o'clock in the morning when the first edition comes out. They know what time they are out, so therefore they are on their corners in the neighborhood of ten o'clock in the morning.

Q. And do you know how delivery is made to the newsboys in your district between the hours of ten in the morning and one in the afternoon

A. Yes.

Q. How is delivery made to the newsboys?

A. By truck drivers.

Q. That is, truck drivers of the Evening Herald and Express? A. No.

Q. Now, when you come on duty at one o'clock, will you outline briefly what you do from that period on through the day, as a general rule.

A. Well, I take my first—I take the Sport Edition, that is the first edition I come to work on that comes out around one o'clock, the time varies a little one way or the other, and I ride around and distribute the papers to the men on the corners, and naturally I see how the papers are going up until the time I come to work, and that is my first duty on the job.

Q. And you ride around and cover the entire territory? A. My district, yes. [240]

Q. Where do you obtain the papers that you deliver in your district?

A. At the branch office at 54th and Figueroa.

(Testimony of Harry Plotkin.)

Q. The branch office of the Herald?

A. Yes.

Q. And Mr. Jake Gratz?

A. That is right.

Q. Now, after you complete the first round with the edition you have mentioned what next do you do?

A. Well, I turn my money in then from the day before's collections. I go in the office and turn my money in from the papers from the day before.

Q. On the first round do you collect from the newsboys?

A. No, I generally collect in the evening, and of course some of them, if I don't collect, I collect on the first round and turn my money in.

Q. Then, as a general rule what do you do after that?

A. Then I ride around again, and then come back in for my next edition.

Q. And at what hour does the next edition generally appear? A. Around 3:30.

Q. And then what do you do?

A. I go out with the papers again and distribute the papers to the corners. That is, part of it; part of it is delivered by truck and part I take myself. [241]

Q. Approximately how long does that take you, as a general rule?

A. About a half hour; 40 minutes.

Q. And then what do you do next?

A. As a general rule—then, of course, I come

(Testimony of Harry Plotkin.)

in again. On the night edition there is two sections of it, so I come in right after I deliver the first load that I get and then make up my boards for the night Final and Races, and then go out with my second load of night editions.

Q. What do you mean by the expression you make up your boards

A. Well, we have galleys for all the corners and with the amount of papers they receive, and of course according to the way papers are going. If they are going real good, in cases like the present with the big stories, naturally they want more papers and I ask the boys how many they can use and give them accordingly. So I change the galleys and make them up every day. They have a standing order they get every day, and if their papers are going right good they want more and I send them more, and if they are not going good they have the privilege of cutting them down, and I cut them down to what I think they can use or what they ask for.

Q. How do you make up this board? Do you prepare that every night?

A. Well, that is on the galley; that has been the stationary way for years, that the corners—well, when I came there it [242] was the same way. A corner has been established that it does so many papers on an average every day, and that amount of papers on the last editions are stable, and we have, like I say, the privilege of increasing or de-

(Testimony of Harry Plotkin.)

creasing when we come in for those last two editions.

Q. And then after you make up the board what next do you do?

A. Well, I go out with my second night edition and deliver those to the men on the corners, and then I ride around to see how they are going, and if they are going real good and the fellows want more papers I have the privilege of calling up and increasing the papers, increasing the number to what they want, and if they are not going I have the same privilege of calling up and cutting the order so they will be able to sell out.

Q. As a general rule, during what hours of the day do you make these two trips around your district with, I believe you said, the night edition?

A. Yes. Well, the first night edition comes out in the neighborhood of around 3:30. Sometimes it will come out at 3:15 or a quarter to 4:00, but it will average around 3:25 or 3:30, the first edition we get out at the branch, and then I come in at about 4:00 o'clock and will go out with the second load, and then my deliveries are through for the day with the exception I go around to see how they are going before I go to my dinner. And then I have an hour for dinner [243] between there.

Q. And then is the next thing you do after dinner to make your collections?

A. Then I make my collections, yes.

Q. And, then, as a general rule what hours do you make your collections?

(Testimony of Harry Plotkin.)

A. I start in around, anywhere from 6:15 to 6:30.

Q. And approximately how long does that take?

A. Well, I wind up at 8:00 sharp. It might be a few minutes one way or the other.

Q. And after the newsboys check in do they then leave the corners?

A. No. As a rule, the men stay out there until 8:00 o'clock the all day men that is there.

Q. That is true of the majority of the men?

A. Oh, yes.

Q. Now, how long have you been a district manager, Mr. Plotkin, in this district?

A. Well, this last stretch I have been with the Evening Herald and Express for ten years.

Q. Have you been out in Jake Gratz' branch during that——

A. (Interrupting) All the time.

Q. And have you handled the same district?

A. The same territory, yes.

Q. Now, from time to time in your work, have the newsboys [244] in your district taken up matters with you regarding their selling papers?

A. I don't understand.

Q. Well, let me ask you this: Are the newsboys in your district at this time permitted full returns?

A. We give them returns, yes, sir.

Q. Well, are they permitted full returns?

A. Well, I would say on the basis you speak, yes, they are practically full returns there. If a

(Testimony of Harry Plotkin.)

man has two or three papers left, why, he doesn't consider that as having any left. He doesn't even want to turn them in.

Q. But in the event he has two or three papers left, he is not permitted to return those and given credit for them, is he?

A. He will get credit if he turns them in, yes.

Q. Well, are the newsboys in your district then at all times given full returns of all papers that they receive? [245]

The Witness: I don't know how to make that statement there. Whenever the men have any papers left, the next morning I pick them up and I give them returns for them, if that is what you mean.

Q. (By Mr. Mouritsen) And is that done in all instances with all the newsboys under your supervision?

A. With all the newsboys under my supervision, yes.

Q. Now, Mr. Plotkin, have the newsboys in your district from time to time taken up the matter of receiving returns with you and discussed that with you?

A. They have never discussed it with me, no, sir.

Q. Was there a time, was there a period during which the newsboys in your district were not permitted full returns? [246]

The Witness: Well, there was a time several

(Testimony of Harry Plotkin.)

years ago when if a man was stuck with papers, if they had a bad day, it happens now and then, there is no human being in the world that can judge how papers are going to go, we would always take care of them; we wouldn't give them full returns, but we would take care of them to a large extent so they wouldn't suffer a large loss. It would be a small proportion of what they had left.

Q. (By Mr. Mouritsen) During that period did various of the newsboys take up with you the matter of receiving full returns?

A. Never, never.

Q. I understand from your testimony, Mr. Plotkin, that the situation is different now than it was at that time; is that correct?

A. That is correct. [248]

Q. Mr. Plotkin, will you tell us what changes took place in your district on or about November 1, 1937, with reference to returns allowed to newsboys? [265]

The Witness: Well, if I may state it my way, the policy of the Herald as far back as I can remember has always been—had always been on a non-returnable basis. That was their policy. [266]

In November in 1937, the price of the paper went up, and due to the fact that there was naturally adjustments, a lot of people could not afford 5 cents, and so the papers fluctuated, so therefore they established a returnable basis, or took care of papers that the fellows had left over until we could

(Testimony of Harry Plotkin.)

get the orders regulated to the present time the way they are now.

Q. (By Mr. Mouritsen) And did you receive any instructions regarding that change of policy on the part of the Evening Herald and Express?

A. In regard to——

Q. (Interrupting) With reference to returns?

A. (Continuing) —returns? Yes.

Q. From whom did you receive any such instructions

A. My superior, Mr. Gratz.

Q. Jake Gratz? A. Yes.

Q. And did you receive any instructions with reference to change in price from 3 to 5 cents?

A. Just through the notice in the paper, which ran several days, that the paper was to be increased to 5 cents.

Q. Did Mr. Gratz ever say to you that the price to the newsboys was to be changed?

A. Well, no, not at the time. It came out. It was stated in the paper so naturally we knew what it was going to be. [267]

Q. The price at which you were to sell papers to the newsboys?

A. No, the price of the paper to be five cents; the price of the paper to the newsboys?

Q. Well, perhaps I confused you somewhat. What I am trying to find out is who—at that time the price of papers to the newsboys was changed from 2 to 3 cents, was it not? A. Yes.

(Testimony of Harry Plotkin)

Q. And what, if any, instructions did you receive from Mr. Gratz regarding that change?

A. Well, I don't quite recall. I think we all were notified that the paper was going to be 3 cents, the increase to the wholesalers, the boys. Of course we knew that the paper would be 5 cents on the street —on the corners.

Q. And did you in turn pass that information regarding the rise in price to the newsboys?

A. Well, they—the boys naturally, when they knew an increase was going to come out, they asked what it would be, and of course I didn't know until I found out, and then I told them that they would make two cents on each copy, so they knew then it would be three cents.

Q. Now, at or about that time—that is, in November, 1937—the Herald and Express newsboys started to handle the News also, did they not?

A. Well, I can't recall what time, because there have been [268] several times that they have handled them.

Q. Do you recall the last time when they started to handle both newspapers? A. Yes.

Q. Can you fix that, approximately?

A. Well, I couldn't say for sure the date exactly. It is——

Q. (Interrupting) Well, was it during the year 1937?

A. It might have been. I wouldn't swear to it.

Q. How were you informed that such was to be

(Testimony of Harry Plotkin.)

the case, namely, that the Herald and Express newsboys thereafter also were to handle the News?

A. Well, we were told that the Herald and Express and News had got together again, and that the boys were going to handle both papers.

Q. From whom did you receive that information?

A. From Mr. Jake Gratz.

Q. What further did he tell you regarding that fact?

A. That was all. He just told us that the two papers were going to be handled by one man.

Q. Now, after that time did you receive any further instructions from Mr. Gratz regarding the consolidation? A. In what respect?

Q. In respect to any phase or feature of the consolidation?

A. No. I don't understand. We were told that the two papers [269] would be handled by one man, and the boys on the corners were to handle both papers, and that was all there was to it. If there is anything further in regard to that, I don't know.

Q. Well, now, have you given us all of the instructions that you received from Mr. Gratz regarding the—that you recall regarding the consolidation of the two papers, the handling of the two papers, by one newsboy?

The Witness: You mean in regard to the display of the papers?

Q. (By Mr. Mouritsen) Yes, in regard to display and other things?

(Testimony of Harry Plotkin.)

A. Well, there was no set rule, the Herald being the size of paper——

Q. I don't want to know what there was not. I want to know [270] what there was.

What were the instructions, not what were not the instructions?

A. Well, I don't know how to answer that. It has always been—a newsboy is generally—will do what we call "get it in the air" and "pitch that sheet" and he does what he has had to do for years, and he holds that paper out all the time, and so by doing that he always held the News on the outside of his papers to give them a break; to give them a display, if that is what you mean.

Q. Let us return to the instructions that Mr. Gratz gave you regarding this display. And will you please tell what his instructions were?

A. I cannot recall whether he gave us any instructions as to how the boys were supposed to handle the papers or not. I can't recall. It just seemed like it was the natural thing to do, for any newsboy that knew how to handle a paper, or hold papers in his hand.

Q. In your district, Mr. Plotkin, was it the newsboys who had formerly handled the Evening Herald and Express who thereafter handled both papers?

A. Yes.

Q. And was that true in every instance?

A. In every instance. [271]

Q. (By Mr. Mouritsen) Do you know who noti-

(Testimony of Harry Plotkin.)

fied the Herald and Express newsboys in your district that they were thereafter to handle the News?

A. I notified them myself.

Q. And did you receive any instructions from Jake Gratz that the Los Angeles Herald and Express boys were to handle both papers after that date?

A. I didn't receive any instructions. Mr. Gratz—Jake Gratz told me that the two papers were to be handled by the one man on the corner, and so it has been done before, and so I knew the proceedings of it, that is all. I was not—I did not need any instructions in regard to that.

Q. Well, do you know who determined, so far as the newsboys in your particular district are concerned, that the Herald and Express newsboys were to handle both papers after the date of consolidation?

A. Yes. If I am permitted to answer that, in my particular district I don't think there was over three News hustlers at the time that were handling the News separately—possibly four at the most. So the men that had been on the corners selling Heralds had been on there for years, so the natural thing was for them to take right over. [273]

Q. Is it a fact, Mr. Plotkin, that the sale of the paper is largely determined by the headline that appears, or the news items that appear in the papers?

A. Well, yes and no. Newspaper sales is a funny thing. Personally, I have been in it myself, and I

(Testimony of Harry Plotkin.)

have seen headlines where I would say they would not sell a paper, and they would go like a house afire, and I have seen a good headline and you couldn't give them away, and so, like I made the statement before, no human being can tell how a paper is going to go from one day to another. So there you are in that respect.

Q. Now, in your district, Mr. Plotkin, do you have a number of newsboys who are called wholesalers and who receive a [274] check from the Los Angeles Evening Herald and Express?

A. Yes.

Q. What duties do those men perform?

The Witness: Their duties are to supply the boys on the other corners with papers, and collect from them and see that they are out there working. That is the duties of the wholesaler.

Q. (By Mr. Mouritsen) And in payment for the check are they instructed to be there at the time when the district man comes around, so they can get those papers for distribution?

A. Well, that, I—any newsboy knows what time the first edition comes out, so therefore he is on the corner. So far as whether he is instructed to come down there, that is without my knowledge. I don't know.

Q. Mr. Plotkin, during the time that you have been a district manager, have you from time to time hired a number of these check men?

A. Yes, I have hired a number of them.

(Testimony of Harry Plotkin.)

Q. And have you done that recently, Mr. Plotkin, since January 1, 1937? A. A couple. [275]

Q. And do you understand that it is a wholesaler?

A. Yes, I understand that it is wholesalers.

Q. And can you tell us in general what instructions you give to a check man when you hire him?

A. Well, when I put a man to work on the corner, I tell him what the duties are, such as taking charge of the boys, and supplying them with papers, and seeing that they are working, and I tell him the first edition comes out around a quarter of 10:00 or 10:00 o'clock, and so he knows that he should be there at that time He knows the paper comes out at that time.

Q. Do you also instruct him that he is to check these men in? A. The boys?

Q. These boys in?

A. Yes. He knows. The instructions are that he supply the boys with papers on the off corners, and then he collects from them, and then he in turn checks in to me.

Q. What time does he check in to you?

A. Well, it all depends. I start in on my first corner somewhere in the neighborhood of 6:15 to 6:30, and wind up at 8:00 o'clock, and whatever time I happen to get by that certain [276] corner, I check him in.

Q. Can you tell us in general what time you generally come by that corner so he can be ready to check in at that time?

(Testimony of Harry Plotkin.)

A. Well, I don't tell them what time I come by, no, because sometimes I will get there a half an hour earlier, or sometimes I will get there a half an hour later. So there is no set time, what time I am going to come by.

Q. I mean as a general rule, does the time vary more than a half an hour when you make your round?

A. No, because it takes me so long to check in my district, and each man knows after he has been there a couple of days, he knows just about what time I should be around there, barring accidents.

Q. Now, Mr. Plotkin, do you have in your district any newsboys who are not wholesalers or check men?

A. Well, yes. I have quite a number of them that work under the wholesalers.

Q. During the time that you have been district manager, have you put any of those boys on any of the corners in district?

A. Why, yes, I practically hire all of them.

Q. And have you done that in the last several years; that is, since January 1st, 1937?

A. Oh, yes.

Q. Now, will you state generally just what your practice is with reference to what you say to one of these other news- [277] boys when he works on the corner?

A. Well, we generally have—I have any number

(Testimony of Harry Plotkin.)

of boys stop me from day to day, all over my district, and ask me if there is any of my corners open. If I have none, I tell them I haven't any at present, but I take their name and address and tell them if there is any corner open, I will be glad to call them, and that is how I get my boys.

Q. When you call on one of these newsboys other than the check men or wholesalers and you put him on the corner, what do you say to him, briefly?

A. Well, I tell him to—for instance, I will say, as to one specific corner, 54th and Vermont, we will say, I will tell the boy "Now, here is a corner open there. You go and see the man in charge there and tell him I sent you, and he will put you to work," and I tell him that the harder he gets out there and works, the more money he will earn, and that is what he is out there for, and that is all I tell him. So he proceeds to the corner, wherever it is, and the wholesaler will supply him with papers and take care of him.

Q. And in the meantime, I presume you have instructed the wholesaler what he is to do when you send these various boys to him?

A. He knows. He doesn't have to be instructed.

Q. Have any of the newsboys in your district ever taken up with you individually the question of when they should take [278] time off to eat?

A. No.

Q. And none of the newsboys have ever discussed that with you individually?

(Testimony of Harry Plotkin.)

A. No. They have never asked me when they could go to eat.

Q. How about their taking several days off the corner? Have they ever taken the matter up with you?

A. Any time a man wants to lay off, if he has got somebody to take his place he is perfectly welcome. They do that right along. Any time they wish to lay off, if they have the corner covered or will let me know a couple of days ahead, I supply a man there for the period of time that they wish to be off. That is their privilege, to do that any time they wish.

Q. From time to time, Mr. Plotkin, in the last two or three years, have you received from the Herald and Express various advertising placards advertising the Los Angeles Evening Herald and Express? A. Yes.

Q. And have you in turn passed those on to newsboys for display?

A. Well, in most cases I used to put them in the boxes myself, and then I would ask them if they would do me the favor and put them in the box. It is my duty to put them in the box, and I have asked the newsboys to put them in the little hooks there where they fit in. It is up to me to do it. [279]

Q. What are those boxes to which you refer?

A. Just put their Heralds on—little small boxes where they can lay their papers on, their surplus Heralds, instead of holding them all in their arm. They just lay them down on the box. That is all.

(Testimony of Harry Plotkin.)

Q. And those boxes are supplied by the Herald and Express; is that right? A. Yes, sir.

Cross Examination

Q. (By Mr. Hamblin) Mr. Plotkin, in your direct examination, after stating that some of the news vendors are on corners at 10:00 o'clock, you stated—or thereabouts—you stated they know what time they are out.

That second "they are" referred to what?

A. To the papers, what time the papers come out.

Q. Do you give any instructions to any newsboys with reference to what time they shall start selling papers?

A. No, I don't instruct them in that regards.

[280]

Q. As I understand it, on Saturday mornings you start your functions prior to 10:00 o'clock?

A. Yes; on Saturday morning I come down earlier.

Q. On those occasions, on Saturdays, what have you observed with reference to the presence or absence of news vendors on corners?

A. Well, as a rule, in going around with my first edition on Saturday morning, I generally find the fellows all there waiting.

Q. Is that also true on other days when you have observed?

A. That I couldn't say, because I don't get down until 1:00 o'clock, so I don't know what time they get down in the morning.

(Testimony of Harry Plotkin.)

Q. When you make your first trip around on week days, are all the corners from which papers are sold occupied as a rule?

A. No. Just the wholesalers' corners are occupied at that time.

Q. What time do the other newsboys appear on those corners, as far as you have observed?

A. Well, generally anywhere from 3:30 to 4:00 o'clock in the afternoon. [281]

Q. Is there more than one wholesaler on a corner?

A. No, there is just one wholesaler to a corner.

Q. So then, as I understand it, the wholesalers are on their corners on week days prior to the time you make your first trip around, but the other news vendors are not?

A. No. They don't come down until 3:30—anywhere from 3:30 to 4:00 o'clock.

Q. In addition to stating percentages, Mr. Plotkin, can you give us the approximate number of news vendors within your district who are so-called wholesalers, and the approximate number who purchase papers from those wholesalers? A. Yes, sir.

Q. Then you may answer the question.

A. There is about 14 wholesalers and about 80 vendors. [282]

Q. You stated that with reference to placing boys on corners, you hired practically all of them. Can you explain what you meant by that statement?

A. Well, what I meant by that, a lot of times boys will move away from the neighborhood where they

(Testimony of Harry Plotkin.)

are selling papers, and it is too far for them to go there after school, so they just quit their corners, and there is a vacancy there and, like I stated, boys have come to me and asked me if there was open corners, and if an occasion of that kind arises, why I will notify the boy that there is a corner open and if he wishes to sell papers he can, and in many instances the wholesalers that are in that neighborhood have boys' names and addresses that have come to them and asked for corners, and they will get them and put them to work there on the corner.

Q. (By Mr. Hamblin) With reference to the last three years [283] when vacancies have occurred on corners, what have the wholesalers had to do with obtaining a boy to sell papers on those corners?

The Witness: May I ask, how they have proceeded to get the boys?

Q. (By Mr. Hamblin) What I mean is, do the wholesalers secure boys to occupy vacant corners?

A. Yes, in the greatest majority of cases, they do; and in cases where they have no boy available, they will ask me if I know of a boy that wants to sell papers. [284]

Q. When you deliver the first edition of the paper, which you normally deliver in the afternoon, to the wholesalers, do you deliver papers for sale by the wholesalers in turn to other newsboys, or what papers do you deliver at that time?

A. The first edition I deliver to the wholesalers in the afternoon are for their own use, to sell on the corners.

(Testimony of Harry Plotkin.)

Q. At what time of the day normally do you commence supplying papers to wholesalers for resale to the other newsboys on the corners?

A. With the Night Edition, which comes out about 3:30 in the afternoon.

Q. But prior to that time, the papers delivered to the wholesalers are delivered to them as main spots, as main spot men, in order that they can resell those papers themselves, personally; is that it?

A. That is correct. [285]

Q. Would it be correct to say, Mr. Plotkin, that the so-called wholesalers do not conduct their wholesaling activities of selling papers to other boys until approximately 3:30 in the afternoon?

A. That is absolutely correct.

Q. They then wholesale the Night Edition, as I understand it?

A. That is the first edition, yes.

Q And do they also wholesale later editions?

A. Two others.

Q. What editions?

A. Night Final and the Race Results.

Q. Normally, during that period of time while they are wholesaling the Night Edition and the Night Final Race Results, what other activities are they carrying on? A. Selling themselves.

Q. That is, their own supply of papers?

A. Yes.

Q. And in your observation, how late do they continue to sell their own papers?

(Testimony of Harry Plotkin.)

A. Well, as a rule the wholesalers generally work until around 8:00 o'clock, providing they have a supply of papers. If they are sold out at 7:00 and there are no papers available to them, then they are through at that time, but ordinarily they will work until around 8:00 o'clock. [286]

Q. Then as I understand it, they have distributed the Night Final Race Results edition as wholesalers by about 5:30 in the afternoon, but they continue to sell their own papers until 7:00 and very likely 8:00 o'clock; is that correct?

Trial Examiner Kennedy: You work for the paper that this attorney represents, do you?

The Witness: The Evening Herald and Express.

Trial Examiner Kennedy: Do you belong to any Union?

The Witness: To the Newspaper Guild.

Trial Examiner Kennedy: The Newspaper Guild?

The Witness: Yes, the American Newspaper Guild.

Trial Examiner Kennedy: Is that in any way connected with the Union that is involved in this case?

The Witness: No. We are a National organization, the American Newspaper Guild, all over the United States.

Trial Examiner Kennedy: Are you affiliated with the C. I. O.?

(Testimony of Harry Plotkin.)

The Witness: I believe they are affiliated with the C. I. O. [287]

Trial Examiner Kennedy: Read the question, Mr. Reporter.

(The question referred to was read by the reporter, as set forth above.)

The Witness: Yes, sir.

Mr. Hamblin: That is all.

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Plotkin, these so-called wholesalers or check men, they furnish the papers to the other newsboys at the same price at which they receive them, namely, at 3 cents; is that correct? A. Correct.

Q. There is no differential between the price at which they [289] obtain the papers and that at which they pass them on to the other newsboys; is that correct? A. That is correct.

Q. So that this wholesaling operation amounts to nothing more than that they merely pass on the papers that they have received from you or the driver, the number being set, and they collect for that number of papers; is that correct?

A. That is correct, whatever they give the boys.

LOUIS KENNETH FRANCE

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

(Testimony of Louis Kenneth France.)

Direct Examination

Q. (By Mr. Mouritsen) Your address, Mr. France? A. 14256 Roblar Place, Van Nuys.

Q. Mr. France, you are a district manager for the Los Angeles Evening Herald and Express?

A. I am.

Q. And you work in Mr. Brewster's district?

[290]

A. Mr. A. W. Brewster.

Q. And how long have you been a district manager in Mr. Brewster's district?

A. I worked for Mr. Brewster and the Herald-Express for about 17 years.

Q. And in the same district?

A. About 13 years in the same district.

Q. And that is in the district in which you now operate? A. The one I am in now, yes.

Q. Will you outline briefly your duties as district manager, Mr. France?

A. From the time that I—during the day or at the time I come to work? Do you want the entire day?

A. Your entire day.

A. Well, at 1:00 o'clock I am at the office, and check in my dough, or my money, from my previous night's collections. [291]

About 1:00 o'clock I get in the office and check in my money from the previous night's collections for the day's papers, and then around 2:00 o'clock, I make my rounds of my district and see that they are

(Testimony of Louis Kenneth France.)

—well, if they have enough papers on the corners and the wholesalers have enough papers to keep the corners covered, and back in the office around 4:00 o'clock to put in a Night Final order, of which the wholesalers on the corners tell me the amount of papers that they want on that edition. And then about 5:00 o'clock, I go out to eat and back on and start my round about 6:15, and from 6:15 to 8:00 o'clock or thereabouts, until I finish up with my collections, that constitutes my day.

Q. And approximately how long does it take you to make your collections?

A. About two hours.

Q. So that you, as a general rule, begin your collections about 6:00 o'clock in the evening and go until 8:00; is that correct?

A. Well, approximately, yes, around 6:00 to 6:15 they start, and then whenever I finish up with the collections.

Trial Examiner Kennedy: What do you collect in that period of time?

The Witness: All the money from the newsboys for the papers.

Trial Examiner Kennedy: From the newsboys? Do you go to each corner and collect? [292]

The Witness: No; from the wholesalers on the corners, or if there is not a wholesaler, then it is direct from him.

Trial Examiner Kennedy: Then it is what?

The Witness: Then it is direct from the boy, on small spots where there is no wholesaler.

(Testimony of Louis Kenneth France.)

Trial Examiner Kennedy: I see.

Proceed.

Q. (By Mr. Mouritsen) Approximately how many wholesalers do you have in your district?

A. I believe I have around 13, off-hand.

Q. And other than the wholesalers, do you have newsboys in your district to whom you supply papers directly and from whom you make collections?

A. Yes, sir.

Q. Approximately how many of such newsboys do you have in your district?

A. Approximately fifteen.

Q. During the last three years, have you hired any of these check men or wholesalers?

A. Not during the last three years, no, sir.

Q. When did you last hire such wholesalers or check men, or such a wholesaler or check man?

A. The last man that was put to work as a wholesaler, or to move up from an off corner, was about five years ago.

Q. Who was that? [293]

A. I beg your pardon?

Q. I say, who was the man? What was his name?

A. The man that I put to work as a wholesaler, that I moved up, the last one, is that it?

Q. Yes. A. Sandy Bressman.

Q. Have you hired any of these other boys to whom you personally take papers and from whom you personally make collections?

The Witness: I keep the other small corners cov-

(Testimony of Louis Kenneth France.)

ered. That is my job. I have to see that all the corners or spots have a boy there to sell the papers.

Q. (By Mr. Mouritsen) And have you put any of those boys on such spots within the last three years? [294]

A. Yes, the smaller spots; they keep changing during the periods of time with the boys moving out of the neighborhoods and moving away, moving out of town, and they don't want to come too far to work on a corner.

Q. Well, do any of these boys, these newsboys to whom you personally make delivery and from whom you personally make collections, work or sell papers during the full day, that is, approximately from 10:00 A. M. until 8:00 P. M.? A. No.

Q. Mr. France, will you explain briefly, if you know, what duties the check man or wholesaler performs for the check he receives from the paper?

A. Keeping the—supplying papers to the off corners on his corner. That is his—the transportation department drops papers on the corners, and the wholesaler supplies the off corners with papers. [295]

Q. (By Mr. Mouritsen) Well, is it a duty of the check man or wholesaler to pass on to other newsboys the papers that he receives from them from the truck driver, or from the district man?

A. Yes. He passes them on to the other newsboys.

Q. And in your district, is it his duty to collect from such newsboys the—to collect for the papers that he so passes on to them?

(Testimony of Louis Kenneth France.)

A. Yes, sir.

Q. And is it one of his duties that he in turn is to turn that money over to you?

A. Yes, sir.

Q. The papers that are received to pass on to other newsboys are to be passed on to them at the same price at which he receives them, namely, 3 cents a copy; is that correct?

A. Yes, sir.

Q. And he is to collect from such newsboys 3 cents a copy for each paper furnished; is that correct? A. That is correct.

Q. Mr. France, are the newsboys in your district permitted to return all unsold copies of the Evening Herald and Express? [298]

A. The excess order which is sent out by the office is returnable, but not the order that they—they themselves give.

Q. In other words, they are not permitted full returns on ordinary occasions; is that correct?

A. Not on their regular order, no.

Q. And on these occasions when extras are—extra copies of the paper are given to them, do you determine the number of such extra copies that they shall receive?

A. During the course of the day, you mean—according to headlines?

Q. According to the headlines. A. Yes.

Q. And that has nothing to do with their standing order, is that correct? A. Yes, sir.

(Testimony of Louis Kenneth France.)

Q. Now, your testimony is that on such papers they are permitted full returns; is that correct?

A. On all excess papers up to and above their order.

Q. During the last three years have any of these individual newsboys taken up with you the matter of securing full returns?

A. They have asked for full returns, but in turn are informed that they have the right to govern their orders accordingly so that they may not —there won't be any papers left over. [299]

Q. And during the last three years, have any of these individual newsboys taken up with you the period during which they could eat lunch?

A. No. That is entirely up to them.

Q. None of them have taken it up with you?

A. None of them, no, sir.

Cross Examination

Q. (By Mr. Hamblin) Mr. France, other than the 13 wholesalers that you mentioned, and the 15 news vendors, to whom do you deliver the papers directly? How many other news vendors are there selling Evening Heralds and Expresses within your district at the present time?

A. Between 40 and 45, probably.

Q. Are you a member of any Union?

A. Yes, sir.

Q. What Union? A. Newspaper Guild.

Q. Affiliated with the Congress of Industrial Organizations? A. Yes, sir. [300]

(Testimony of Louis Kenneth France.)

Redirect Examination

Q. (By Mr. Mouritsen) Mr. France; during what hours of the day do these 40 or 50 additional newsboys whom you mentioned in addition to the wholesalers, the others to whom you make direct delivery, during what hours do they work?

A. They work from about Sport time until around about 7:00 o'clock.

Q. Well, can you fix Sport time for us a little more definitely? A. Well, say 2:15.

Q. And the 14 wholesalers or check men work in general from 10:00 A. M. in the morning until 8:00 at night; is that correct?

A. From the time that the first edition drops on the corner, which is approximately around 10:30.

Recross Examination

Q. (By Mr. Hamblin) Mr. France, isn't it a fact that a great many of these 40 to 45 newsmen that you last mentioned are schoolboys?

A. Yes, sir, they are.

Q. And they commence to sell newspapers after school hours; is that right?

A. After school, yes, sir.

Q. Can you give an estimate as to how many out of the 40 [301] to 45 are schoolboys?

A. I would say about half of them were high school boys.

Q. Well, the majority of these 40 to 45 vendors that you last mentioned start selling the paper

(Testimony of Louis Kenneth France.)

commencing with the Sports edition; is that right?

A. Yes, sir.

Q. Then they sell the Night Edition also?

A. Yes, sir.

Q. And the Night Final? A. Yes, sir.

Q. And Seven Star Final? A. Yes, sir.

Q. In other words, they sell four out of the seven editions——

A. (Interrupting) Yes, sir.

Q. (Continuing) ——of the paper; is that right? A. Yes, sir.

Q. Considering only these 40 to 45 vendors which you have mentioned, do they all procure their newspapers from the so-called wholesalers? [302]

A. I stated before approximately 13 wholesalers, and the 15 other boys that I supply.

Q. Yes. Then there are 40 to 45 in addition?

A. In addition, that are supplied by the wholesalers.

Q. Then, on the average, over what period of time do the wholesalers supply these boys with papers?

The Witness: Do you mean between what hours?

Mr. Hamblin: Yes.

The Witness: Well, from 2:00 or 2:15 until 7:00 o'clock.

Q. (By Mr. Hamblin) Do you give any of these three classes of news vendors—that is, the

(Testimony of Louis Kenneth France.)

wholesalers and the others to whom you deliver direct, and the other newsboys—any instructions as to the hours of sales on corners?

A. No. They are—from the wholesalers they are on from Sports on until 7:00 o'clock, and from the other ones they are on—after the—the schoolboys are on from the time they [303] are out of school until about 6:30.

Q. Well, do you instruct them as to any particular hours during which they are supposed to be on their corners?

A. They are on—tell them to get there as soon after school as possible for the sale of papers, and the corners that are off, they run 6:30.

Redirect Examination

Q. (By Mr. Mouritsen) Mr. France, wholesalers are not schoolboys; is that correct?

A. They are not; yes, sir.

Q. And all of them are men of more mature age than schoolboys, are they not?

A. Yes, sir. [304]

After Recess

(Whereupon the hearing was resumed, pursuant to recess, at 1:30 o'clock P. M.)

SID FABER

called as a witness by and on behalf of the National Labor Relations Board, being first duly

(Testimony of Sid Faber.)

sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Sid Faber.

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Faber? A. 1562 McGilvary Street.

Q. In the City of Los Angeles? [305]

A. Yes.

Q. And do you sell the Evening Herald and Express at present? A. Yes, sir.

Q. Where do you sell it?

A. Third and Broadway.

Q. You also handle the News?

A. Yes, sir.

Q. At the same place? A. Yes.

Q. How long have you been on that corner?

A. About a year.

Q. And from whom did you obtain the corner?

A. The district manager, Joe Woods.

Q. Now, there are, I believe, four corners to the intersection there; is that correct?

A. Yes.

Q. And on which of those corners do you operate? A. The southeast corner.

Q. And are you the main spot or the off spot boy? A. The main spot.

Q. And as the main spot boy, what do you do or how do you receive the papers from the district manager?

(Testimony of Sid Faber.)

A. Well, I wholesale them to the other three spots.

Q. You receive them from Joe Woods?

A. Yes. [306]

Q. Or his driver; is that correct?

A. Yes.

Q. And then when you say you wholesale them to the other three spots, what do you do in that regard?

A. Well, they come over for each edition and I hand them out the papers, the amount which each corner takes.

Q. And do you determine the number of papers they get or is that determined by Joe Woods or his drivers?

A. Well, they all have an amount of papers they have out on each edition.

Q. I believe you stated that you count these papers out to these other boys on the other corners; is that correct? A. Yes.

Q. And how many other men are there on those three corners?

A. Three, besides myself.

Q. Now, do you receive any check from the Evening Herald and Express for doing that work?

A. No, sir.

Q. Do you also do that same type of work for the News? A. Yes, sir.

Q. And do you receive any check from the News for performing that type of work?

(Testimony of Sid Faber.)

A. No, sir.

Q. Now, did you put any of these three other fellows on the corners? [307]

A. No, sir.

Q. Now, have you recently had a conversation with Joe Woods regarding a relief man for your spot? A. Yes.

Q. And approximately when did you have such a conversation?

A. Well, the day before Decoration Day, Joe Woods come down to my corner——

Q. Well, what year?

A. June, 1940—the day before Decoration Day.

Q. This year? A. Yes.

Q. Where did you have such a conversation with Joe Woods? A. On my corner.

Q. And was anyone else present who took part in this conversation? A. No, sir.

Q. Will you please state what Joe Woods said to you and what you said to Joe Woods?

A .Well, he said, who am I going to have to work

A. Well, he said, who am I going to have to work on my corner Decoration Day, and I said "I am going to have my relief man."

And he said he didn't want that; I was to put the other fellow across the street to work there.

Q. And did you put the fellow designated by Joe Woods to work as your relief?

A. Well, Joe Woods went over to him and I guess he told him. [308]

Q. In any event, did the man whom you had

(Testimony of Sid Faber.)

selected as your relief cover the spot or take care of it? A. No, sir.

Q. Since that time, have you had any further conversation with Joe Woods regarding your operations on the corner? A. Yes, sir.

Q. And when did such a conversation occur?

A. Well, Joe Woods came by my corner.

Q. Can we fix the date, approximately?

A. About a week and a half ago.

Q. And where did the conversation take place?

A. On my corner.

Q. Was anyone else present other than you and Joe Woods? A. No, sir.

Q. Will you please state what Joe Woods said to you on that occasion?

A. Well, Joe Woods came over to me and he had a grudge against a friend of mine who was hanging around the corner.

Q. Just state what Joe Woods said to you at that time, and what you said to Joe Woods and what you said to Joe Woods, if anything?

A. Well, he didn't want this fellow hanging around my corner, and he says that I had better have him not come around the corner, and I said, "Well, I didn't know what to do. You know I couldn't kick him off the corner."

And he says, "Well, I am still boss, and I don't have to [309] give you any papers."

Mr. L. B. Binford: At this time the Stock-

(Testimony of Sid Faber.)

holders Publishing Company wishes to make a motion to strike all conversations testified to by the witness, with Joe Woods, as no connection between Joe Woods has been shown with the Stockholders Publishing Company. [310]

Trial Examiner Kennedy: Well, I will grant the motion. The testimony will not bind the Stockholders Publishing Company. If it later develops from the evidence that Joe Woods is in any way acting for the Stockholders Publishing Company, I will entertain a motion to reinstate the testimony as of that time.

Mr. L. B. Binford: That is entirely agreeable.

Mr. Cosgrove: Will it be stipulated, Mr. Mouritsen, that the testimony of this witness has no application to the Times-Mirror Company?

Mr. Mouritsen: It will be so stipulated.

Mr. Hall: Will you make the same stipulation as to the Los Angeles Examiner?

Mr. Mouritsen: It will be so stipulated.

Cross Examination

Q. (By Mr. Compton) Mr. Faber, you sell the Herald and Express? A. Yes, sir.

Q. Do you sell the Daily News? [312]

A. Well, the News—the Evening News.

Q. Do you sell the Saturday Evening Post?

A. Yes, sir.

Q. Do you sell Liberty? A. Yes, sir.

Q. Do you sell Collier's? A. Yes, sir.

(Testimony of Sid Faber.)

Q. Do you sell any form sheets?

A. No, sir.

Q. Do you sell racing news? A. No.

Q. What other publications do you sell besides the ones I mentioned?

A. Well, I handle the morning Examiner sometimes in the morning.

Q. From whom do you purchase the magazines that you sell? A. Joe Woods.

Q. Do you sell those magazines in the same manner that you sell newspapers? That is to say——

A. (Interrupting) Yes. [313]

Q. (By Mr. Compton) And you retain the profit that you make on the sale of those magazines? A. Yes.

Q. Are you permitted to return any unsold copies of magazines? A. Yes, sir.

Q. Do you know who preceded you on the particular corner which you now occupy?

A. You mean, who was there before me?

Q. That is right. A. Eddie O'Brien.

Q. Did you purchase that corner from Eddie O'Brien? A. No, sir.

Q. You stated in reference to a conversation with Mr. Woods that your regular relief man was not permitted to take that relief on Decoration Day; is that right? [314] A. Yes, sir.

Q. You had such a regular relief man, didn't you? A. Yes.

Q. And he had taken your corner many times before, had he not?

(Testimony of Sid Faber.)

A. He takes it any time I go to lunch, and he had been taking it when I am off.

Q. And at this particular time, you state that Mr. Woods stated he would not permit your regular relief man to take your place on Decoration Day?

A. Yes.

Q. Did he state any reasons therefor?

A. No, he didn't.

Q. Did he state that the man didn't pay for the papers? A. No, sir.

Q. Did he state that he couldn't trust him to pay for the papers? A. No.

Q. Are you sure that he didn't announce any reason whatsoever for refusing to let him take the corner on that day?

The Witness: No, sir.

Q. (By Mr. Compton) When your regular relief man took the corner, did he make his arrangements with you? [315] A. Yes.

Q. And did you pay him for taking your corner? A. Yes.

Q. Did you pay him a regular stipulated wage for that purpose? A. Yes, sir.

Q. And did it consist of a specified amount, or did you make it according to the number of papers he sold that day?

A. Well, the way we worked on Decoration Day, he makes all he can.

Q. He makes all he can? A. Yes, sir.

Q. And do you give him any portion of the com-

(Testimony of Sid Faber.)

pensation which you receive from the—you testified you don't receive any compensation from the Herald? A. No, sir.

Q. Do any of these boys on the off spot corners work for you? A. No, sir.

Q. They simply come to you and get their papers and pay for them?

A. They check in to me at night.

Q. They give you the money for the papers that they purchase from you? A. Yes. [316]

Q. And those papers are charged against you, aren't they?

A. Well, I check in the middle of the day out of my own pocket, and collect for them at night.

Q. In other words, the papers are charged against you, and when you check in you give either papers back or the cash? A. That is right.

Q. Do you pay the cash price at the rate of 3 cents per paper? A. Yes.

Q. And you pay that to whom?

A. Joe Woods.

Cross Examination

Q. (By Mr. L. B. Binford) You spoke a few moments ago of handling also the Evening News. The name of that paper is the News, is it not?

A. Yes, sir.

Q. It used to be the Evening News?

A. Yes.

(Testimony of Sid Faber.)

Q. You never did handle the Morning News, did you?

A. Yes. A fellow that works in the morning leaves them for me.

Q. You mean during the time there was a Morning News and [317] Evening News? A. Yes.

Q. Now, you handle different editions of the News, isn't that correct?

A. No. I still handle the Morning News and the Evening News.

Q. Is it called the Morning News and the Evening News? A. It is called the same thing.

Q. It is called the News, isn't it? A. Yes.

Q. That is the only paper you sell, so far as the News is concerned, the paper called the News?

A. Yes.

Q. And you sell different editions of that paper?

A. Yes, sir.

Q. What editions do you sell?

A. From the Five Star to the Ten Star.

Q. Does Joe Woods deliver those editions to you? A. No, sir.

Redirect Examination

Q. (By Mr. Mouritsen) What time during the course of the day do you ordinarily check in to Joe Woods? A. 4:30. [318]

Q. And at that time, for what papers do you pay him? A. Well, all the Heralds.

Q. Well, for all the Heralds that you have received, that you have received up to that time?

(Testimony of Sid Faber.)

A. No, sir. For all the Heralds I have received all day.

Q. Is that for not only the corner on which you sell, but on the three other intersections on the same corner? A. Yes, sir.

Q. And at that time when you check in, do you receive additional papers for later sale, for which you pay him at that time?

A. I don't know.

Q. Do you understand that? A. No.

Q. At the time when Joe Woods makes his collection around about 4:30, does he leave additional copies of the Evening Herald and Express with you? A. Yes.

Q. And does he at that time leave copies with you for the other three spots on that intersection?

A. Yes, sir.

Q. At the time when you check in at 4:30, do you pay him for those copies that he leaves you at that time for your corner and for the three other spots on the intersection? A. Yes, sir. [319]

Recross Examination

Q. (By Mr. L. B. Binford) Mr. Faber, have you at all times since you have been a newsboy here on this corner sold identically the same papers and publications that you are selling at the present time?

A. Yes, sir.

Q. That applies to all publications? You have neither added to nor taken from the list you have been selling?

(Testimony of Sid Faber.)

A. Well, I have sold them all.

Q. And you have sold them all of the time?

A. Yes, sir.

Q. And there has been no time that you have sold others in addition thereto, that is, others than the ones you are presently selling? A. No.

Q. Is that correct? A. Yes, sir.

Q. You understand what I mean by publications?

A. What do you mean—you mean other newspapers, don't you?

Q. No. I mean other newspapers, magazines, form charts, racing forms, any character of printed matter for sale to the public.

Now, have you sold any such, calling those publications, [320] other than those you are selling at the present time? A. No, sir.

Q. You have not? A. No.

Q. And the list of publications, as I have just defined them, are the same that you are selling now as the day you first started to sell on that corner; is that correct? A. Yes, sir.

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Faber, do you secure the copies of the News that you handle from a News district man; is that correct? A. Yes.

Q. And you check in to the same district man; is that correct? A. Yes, sir.

Q. These other publications that have been enu-

(Testimony of Sid Faber.)

merated, namely, Saturday Evening Post and Liberty, and one or two others, how are they handled on your corner? What position do they occupy?

A. Well, the same way as the Heralds. I give an amount to each corner and they check in to me for them at the end of the day.

Q. And you receive those from Joe Woods?

A. Yes, sir. [321]

Q. And that is your district manager on the Evening Herald and Express; is that correct?

A. Yes.

Q. I mean how are those publications displayed? Do you have a lay-down——

A. (Interrupting) Well, we have a rack.

Q. Do you carry those publications in your hands or arms and display them as you do the Herald and Express and the News? A. No, sir.

Q. And will you describe how you display or carry the Herald and Express and the News?

A. Well, the Herald I keep on the inside, and the News on the outside. And if I hold up one paper, I must hold up the other. But if I don't hold up any papers, I just keep them down. I don't hold up any at all.

Q. You say you must do that? Why do you say you must do that? [322]

The Witness: Well, it has been understood if one paper is held out, the other paper must be held out.

Q. (By Mr. Mouritsen) Well, now, can you

(Testimony of Sid Faber.)

recall where you got that understanding, Mr. Faber, where you received it?

A. Well, the News district man told me that.

Q. And approximately when, if you recall?

A. Approximately about two months ago.

Q. (By Mr. Mouritsen) What is the name of your present district man for the News?

A. His first name is Oscar, but I don't know his second name.

Q. And was Oscar the one who told you about the display of the various papers?

A. Yes, sir. [323]

Recross Examination

Q. (By Mr. Compton) You testified you have been selling the Daily News—or the News and the Herald for approximately a year?

A. Yes, sir.

Q. And the first time you ever received any instructions about the manner of displaying these papers was as you have just testified, when this News man told you? A. Yes, sir.

Q. And that is the only time you ever had any instructions in that respect? A. Yes, sir.

HARRY RELISH

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows: [324]

(Testimony of Harry Relish.)

Direct Examination

Q. (By Mr. Mouritsen) What is your name, please? A. Harry Relish.

Q. Where do you live, Mr. Relish?

A. 426 South Grandview Street.

Q. That is in the City of Los Angeles?

A. City of Los Angeles.

Q. Are you at present newsboy for the Los Angeles Evening Herald and Express?

A. Yes, sir.

Q. (By Mr. Mouritsen) And also for the News?

A. Yes, sir.

Q. And on what spot do you operate at present?

A. Northeast corner of Fifth and Spring.

Q. Is that the main spot or the off spot?

A. Off spot.

Q. The main spot is the place where the papers are left by the district man; is that correct?

A. That is right. [325]

Q. Who is your Evening Herald and Express district manager? A. Sollie Epstein.

Mr. Yoakum: Is that the same person as Joe Woods?

Mr. Mouritsen: No. Sollie Epstein.

Q. (By Mr. Mouritsen) And how long have you been on that spot there?

A. Approximately about six years.

Q. Now, has Sol Epstein ever given you any instructions regarding the manner in which you are to wholesale the papers?

(Testimony of Harry Relish.)

A. Yes. He told me I would have to be on the spot all day, from half past 9:00 to half past 6:00.

Q. (By Mr. Mouritsen) Now, where do you receive the copies of the Los Angeles Evening Herald and Express that you sell?

A. I receive them from the wholesaler, a fellow by the name of Mike Goldberg who is on the southeast corner of Fifth and Spring.

Q. Now, did Sol Epstein ever say anything to you about your being off the corner? [326]

The Witness: Yes.

Q. (By Mr. Mouritsen) Now, about when did Sol Epstein ever say anything to you about your being off the corner?

A. Well, approximately a year ago he met me and——

Q. Met you where?

A. On Fifth and Hill. And he says to me, he says "What are you doing here"?

And I said, "Well, it is about 1:00 o'clock. I was supposed to be at lunch hour."

And he said, "Don't you know you have to be on the corner"?

And I says "I don't know; I have to have my lunch," and I said "I see other boys off——"

And he said to me, "Why aren't you on the corner"?

I said "I have to have my lunch."

"Well," he says, "if you don't watch out you will be off the corner entirely."

(Testimony of Harry Relish.)

Q. (By Mr. Mouritsen) Was anything further said at that time? [327] A. No.

Q. Has Davey Bell ever removed you from your corner for a period?

A. Yes. That was in——

Q. Now, let's fix the foundation. About when did this occur?

A. About four and one-half years ago I was told——

Q. (By Mr. Mouritsen) Did you have a conversation with Mr. Bell about that?

A. Yes. [328]

Q. Now, Mr. Relish, will you state the conversation that you had with David Bell, and if you will state only what he said to you and what you said to him at that time?

A. He told me that I should have to get rid of my corner, and in the meanwhile to put somebody to stay on my corner until I get somebody to sell it and get rid of it, but I will have to move. I am not, in other words, a suitable man to sell papers there. That was the conversation.

Q. Was that approximately all of the conversation that you had with Davey Bell?

A. That is all—well, on another occasion——

Q. Now, when was this other occasion? [330]

A. Well, that was about half a year later. At that time the Herald was sold at 3 cents a copy and it cost me 2 cents a copy——

Q. Well, if we can fix this one more definitely, Harry.

(Testimony of Harry Relish.)

You say it was about half a year after this other conversation? A. Yes.

Q. Where did this second conversation take place?

A. Well, it was like that. I must explain myself, how to go about it. I was stuck—in other words, 35 papers one day——

Trial Examiner Kennedy: Didn't you ask him where the conversation took place?

Mr. Mouritsen: Yes.

Trial Examiner Kennedy: You understand what the word "where" means? The location; where was it?

The Witness: The conversation was on my corner.

Q. (By Mr. Mouritsen): And with whom did you have such a conversation?

A. With Sollie Epstein.

Q. Now, will you state what Sollie Epstein said to you and what you said to Sollie?

A. Well, he told me—I was stuck with 35 papers and I refused to pay for it because I told him I was making $1.50 and if I have to pay for 35 papers, 70 cents, that leaves me 80 cents net for a whole day's work, and I couldn't afford [331] it.

He says to me, "Well, if you don't pay for it, we will put somebody else on the corner."

Q. Is that all the conversation you had with Sollie? A. Then I was told——

Q. Just answer the question.

(Testimony of Harry Relish.)

is that all the conversation you had with Sollie?

A. Yes, that is the conversation.

Q. Now, after that time did you have a conversation with Davey Bell regarding the same subject?

A. I was told to come down to the office, to Davey Bell's office, the following day.

Q. And did you go to Davey Bell's office the following day? A. Yes, I did go down.

Q. Did you have a conversation with him?

A. Yes. He told me "What about the 35 papers which amount to 70 cents"?

I told him the same thing I told Sollie. I refused to pay because I can't afford to pay it. I am not making anything at that if I have to pay for my papers.

Q. And what, if anything, did Davey Bell say?

A. Well, it was laughed off. I went to my corner and nothing else was said at all afterwards.

Q. Now, on this spot do you also handle the News? A. Yes. [332]

Q. And where do you obtain the copies of the News?

A. From the same wholesaler, Mike Goldberg.

Q. Do you know the name of the News district man? A. A fellow by the name of Martinez.

Q. Now, from time to time in the last year have you received any advertising placards from the district manager of the Evening Herald and Express? A. Yes, sir. [333]

Q. (By Mr. Mouritsen): Well, Mr. Relis, dur-

(Testimony of Harry Relish.)

ing the past year have you on more than one occasion received such advertising placards?

A. Yes.

Q. On more than one occasion have you received any instructions relative to such advertising? A. Yes.

Q. Approximately how often during the past year, or on how many different occasions have you received advertising placards from the district manager of the Evening Herald and Express?

A. Well, I would say approximately every three weeks, every other three weeks, especially when the football games was on, I was getting them every two weeks.

Trial Examiner Kennedy: You say every other three weeks?

The Witness: No, every three weeks; two or three weeks.

Q. (By Mr. Mouritsen): And on such occasions—that is, every two or three weeks—did you receive instructions from the district manager regarding such placards? A. Yes. [334]

Q. And in general, on such occasions what instructions did the district manager give you?

A. He told me that they have to be displayed on certain prominent spots, like on the post, on the posts, on the other papers.

Q. And during the past year have you from time to time received advertising placards from the district manager of the News?

(Testimony of Harry Relish.)

A. I have not.

Q. Have you ever had a conversation with your News district man with regard to your presence on the corner? A. Yes, sir.

Q. Have you had more than one conference of that nature?

A. Well, I believe it was once I was told by him——

Q. (Interrupting): Well, can we fix the date of that conversation approximately?

A. Yes. I would say about four months ago; five months ago.

Q. And where did the conversation take place?

A. Well, on Fifth and Spring.

Q. And on what corner? Was it on the spot where you sell?

A. No. I was called to the spot where the papers are delivered.

Q. To the main spot where the papers are delivered? A. Yes. [335]

Q. And who called you there?

A. Martinez.

Q. Did you have a conversation with him at that time? A. Yes.

Q. Will you state what the conversation was?

A. Well, he said, "You know that you have to be all the time on this spot because we want to sell papers."

I said "I know well." I told him yes.

Mr. Mouritsen: You may inquire.

(Testimony of Harry Relish.)

Mr. L. B. Binford: At this time, Mr. Examiner, I make a motion that all testimony given by this witness with respect to any conversations between him and Sollie Epstein and him and Davey Bell be stricken—by both of them be stricken in so far as the Stockholders Publishing Company is concerned.

Trial Examiner Kennedy: May I hear your position on that, Mr. Mouritsen?

Mr. Mouritsen: In view of the Examiner's earlier ruling, I have no objection, Mr. Examiner.

Trial Examiner Kennedy: The motion is granted.

Mr. Cosgrove: Will it be stipulated by Mr. Mouritsen that those conversations related by the witness have no application to the Times-Mirror Company?

Mr. Mouritsen: I will so stipulate with reference to the Times-Mirror and with reference to the Examiner. [336]

Cross Examination

Q. (By Mr. Compton): Mr. Relis, you testified that you sell the Evening Herald and Express and the News? A. Yes, sir.

Q. Do you also sell the Examiner?

A. Yes, sir.

Q. Do you sell the Times?

A. What is left over, we sell it. They leave the money.

Q. Do you sell Liberty? A. Yes, sir.

(Testimony of Harry Relish.)

Q. Do you sell the Saturday Evening Post?

A. Yes, sir.

Q. Do you sell Collier's? A. Yes, sir.

Q. Do you sell Look? A. No, sir.

Q. Do you sell any form charts?

A. No, sir.

Q. Do you sell any tip sheets? A. No, sir.

Q. Do you sell any other magazines?

A. No. Only four magazines, four publications.

Q. Do you sell the Daily Racing Form?

A. No, sir.

Q. Did you ever sell the Daily Racing Form?

[337]

A. Never did.

Q. What price do you sell the Evening Herald and Express at? A. 5 cents.

Q. Do you ever get more than 5 cents for it?

A. Apiece.

Q. How long have you been selling newspapers? A. Six years.

Q. Six years.

And you never got more than 5 cents for a newspaper in all that six years?

A. Never did. Never did.

Q. Recalling your attention to the conversations you testified to with Joe Woods—or rather with Solly Epstein, you stated, did you not, that Epstein told you you would have to sell your corner?

A. No. It was Davey Bell.

Q. Oh, it was Davey Bell told you that?

(Testimony of Harry Relish.)

A. Yes, sir.

Q. Told you you would have to sell your corner?

A. Yes, sir.

Q. Did you buy the corner originally?

A. Yes, sir.

Q. From whom did you buy it?

A. A fellow by the name of Soel. [338]

Q. How much did you pay for it?

A. One hundred dollars.

Q. One hundred dollars? A. Yes, sir.

Q. In selling the magazines, do you purchase them at one price and sell them to the public at another? A. Yes, sir.

Q. And you retain all the profits that you make on those sales? A. Yes, sir.

Q. Are you permitted to return those magazines, those that are unsold? A. Yes, sir.

Cross Examination

Q. (By Mr. L. B. Binford): Do you put up your own money for the purchase of those magazines? A. Yes, sir.

Q. You finance it yourself entirely for the purchase of the magazines and the papers?

A. Well, I do not finance in advance.

Q. No, but you——

A. After I sell them I settle for them, after the week.

Q. You use your money for that purpose? [339]

A. Yes, sir.

Q. Did you use your own money for the purchase of the corner?

(Testimony of Harry Relish.)

A. Well, I had to borrow it.

Q. You borrowed the money and used it for that purpose? It was your own money after you borrowed it, was it?

A. It was. I borrowed from my brother; he gave it to me.

Q. How long have you been selling the News?

A. Well, since they consolidated, I think it was about a couple of years ago—1937.

Q. By "consolidated," you mean certain newsboys in certain territories began selling both papers?

A. Yes, that's right.

Q. You say Mr. Martinez, the district man for the Stockholders Publishing Company, or the News——

A. (Interrupting): Yes.

Q. (Continuing): ——got in contact with you about three or four months ago and talked with you about your being on the corner?

A. Yes.

Q. Had you been neglecting your work?

A. No, I did not.

Q. Had you been staying off of the corner?

A. Well, only at the time when I had to go away. For instance, to get treatments, when I was sick. I put a relief man on. I put a relief man on. [340]

Q. You had been staying away some of the time and getting a relief man on there?

A. Well, on account of I was sick. I was get-

(Testimony of Harry Relish.)

ting treatments. I had hernial treatments. I had a hernia and I had to go away on certain occasions.

Q. How long were you away?

A. It all depends. Sometimes two hours, sometimes three hours.

Q. How many days a week?

A. Well, certain weeks it was twice a week, and sometimes once a week. It all depends on how much treatment I had to have.

Q. It was during that time that Mr. Martinez talked to you and suggested you had better stay on the corner?

Did you tell him then that you had been sick?

A. I did not tell him. He said, well, it would be all right.

Q. When you told him you had been sick——

A. (Interrupting): No. I did tell him I had a relief man; that the corner was covered.

Q. Did you pick out your own relief man?

A. Yes, I picked out my own relief man.

Redirect Examination

Q. (By Mr. Mouritsen): Mr. Relis, do you obtain the magazines from Joe Woods? [341]

A. Yes, sir.

Trial Examiner Kennedy: Is there anything further?

(No response.)

Are you a member of the Newsboys Union?

The Witness: Yes, sir.

(Testimony of Harry Relish.)

Trial Examiner Kennedy: Did you obtain any license from the City of Los Angeles to operate on that corner down there, or from the police department?

The Witness: No, sir. [342]

HARRY THOMAS GISH

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Mr. Gish, where do you reside? A. 122 Commercial Street.

Q. In the City of Los Angeles?

A. Yes, sir.

Q. And during the year 1937, did you sell the Evening Herald and Express? A. Yes.

Q. At what spot, if any?

A. Well, in front of the Grand Central Market at Third and Broadway.

Q. And who was your district man?

A. Why, Joe Woods.

Q. Now, were you ever removed from that spot by Joe Woods? A. Yes.

Q. And when did that occur?

A. I would say that was sometime before Christmas in 1937. [365]

Q. Now, will you tell us just what occurred with reference to your removal from that spot?

(Testimony of Harry Thomas Gish.)

A. Well, when I came to work on one Monday morning, I was asked by the man on the main corner if I had been told anything the week before, and I told him no, and he said, "Well, there is a man in your place, and Joe Woods said for you to come and see him at Third and Hill." And I went to see Joe. So he said he had——

Q. (Interrupting): Now, you saw him at Third and Hill? A. Yes.

Q. And approximately what was the date of the conversation?

A. Well, I wouldn't be able to recall just the exact date, but it was sometime before Christmas in 1937. It could possibly have been two months before or maybe a little less or a little more. I couldn't just definitely state.

Q. Was anyone else present at that time?

A. When I talked to Joe Woods?

Q. That is right.

A. Well, there was a man on the corner, yes, but he wasn't paying any attention to what we were talking about.

Q. What did Joe Woods say to you, and what did you say to Joe Woods?

A. I asked him what was the matter.

He said, "Well, I have had a lot of complaints against you." That is what he told me, and he said, "I will try and [366] get you back on the corner." That is what he told me. And he said, "Come around and see me again," and I went

(Testimony of Harry Thomas Gish.)

whenever he told me, whenever it was; in fact, I went three or four times and he promised me the same thing every time, but he never did put me back.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Compton): Do you sell newspapers at the present time? A. Yes.

Q. Where do you sell?

A. Sixth and Spring.

Q. What papers do you sell?

A. I sell the Examiner and Times in the morning.

Q. You don't sell afternoon newspapers?

A. Well, not what I could be classed as an afternoon hustler, no. I help out the fellow on the main corner occasionally when he wants to go to lunch or something.

Q. In this conversation you had with Mr. Woods, or any of the conversations concerning which you have testified, did Mr. Woods tell you the nature of the complaints he had?

A. Well, he said something or other to the effect that I had on a dirty shirt.

Q. Is that all the complaints?

A. That is all he ever told me. [367]

Q. At the time of the instances you mentioned, who delivered your papers to you?

A. He delivered them to the corner, and I picked them up on the corner over by the drug store, at Third and Broadway.

(Testimony of Harry Thomas Gish.)

A. And by "he," you refer to Mr. Woods?

A. Yes. I wouldn't say that he delivered them every time personally, but the truck brought them around and whoever he might have on the truck was the one that left the papers there, and I come to the corner and picked them up there.

Q. How long have you been selling newspapers at Sixth and Spring?

A. I have been working around there for the last couple of years.

Q. How long a period elapsed between the time that you ceased selling Heralds and started to sell the morning papers?

A. Well, after I left there, why, I sold nights for a while at different places, and then finally I went to work there. I work on the morning papers.

Q. When you refer to the fact that you sold nights, were you selling then the morning papers?

A. Yes.

Q. And you never thereafter sold——

A. I have never had a Herald corner since that.

Q. Or a News corner? A. No. [368]

Q. Except as you testified, you worked relief?

A. That is right.

Q. Where you are working as relief now, whose district is that in? A. Solly Epstein's.

Q. Has he made any—has he ever discussed the matter with you, had any conversation with you concerning your working on relief shift there?

(Testimony of Harry Thomas Gish.)

A. No, he never did, he never did say nothing at all to me.

Q. And who did you say you relieved for?

A. Louis Schwartz.

Q. And with whom did you make your arrangements to work relief there?

A. Well, with him, naturally.

Q. Mr. Schwartz? A. Yes, sir.

Q. And does he pay you for your services there?

A. Well, yes.

Mr. Compton: That is all.

Mr. Hall: This testimony is not being offered against the Los Angeles Examiner, is it, Mr. Mouritsen?

Mr. Mouritsen: Not at all.

Mr. Cosgrove: Nor against the Los Angeles Times?

Mr. Mouritsen: No, Mr. Cosgrove.

Cross Examination

Q. (By Mr. L. S. Binford) Mr. Gish, were you selling the [369] Evening News in 1937, at or about the time you had this conversation with Mr. Woods?

A. Yes, sir.

Q. And the Evening News was the same paper that is now known as the News?

A. That is right.

Q. Mr. Woods didn't deliver those papers to you, did he? A. No, sir.

Q. Or he wasn't the man that delivered them to the corner boy, was he? A. Not the News, no.

Q. That is what I say, the News?

(Testimony of Harry Thomas Gish.)

A. No, sir.

Mr. L. B. Binford: That is all.

We will ask, perhaps, a stipulation that the conversation between the witness and Mr. Woods shall not be held to be binding upon the Daily News or on the News, or the Stockholders Publishing Company, Inc.

Mr. Mouritsen: Yes, I will so stipulate. However, I desire to go into this.

Redirect Examination

Q. (By Mr. Mouritsen) Where did you obtain the copies of the News that you handled at that spot?

A. Well, on the corner, the southwest corner is where I obtained the News. [370]

Q. The southwest corner? A. Yes.

Q. I refer, Mr. Gish, to the period back in 1937 when you were on the Grand Central Market spot.

On that spot did you handle the News?

A. Yes. If it has any bearing on the case, I wish to state that at all times I had the News, even before they were consolidated; I mean that one boy went to selling both of them, because the corner didn't seem to be worth it to have anyone there with the News at that time, or something, and I had both of them.

Q. And while you were on the spot, where did you obtain your copies of the then Evening News?

A. Well, on the southwest corner. That is what I was stating. [371]

GENE LeROY ALLEY

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Where do you reside, Mr. Alley?

A. 579½ North Boyle Avenue, Los Angeles.

Q. Do you occupy any position with the Newsboys Union at the present time? A. I do.

Q. What position is that?

A. I am the secretary of the Newsboys Union. [372]

Q. (By Mr. Mouritsen): Now, Mr. Alley, in your official position with the Union, do you have custody of the records of that Union? A. I do.

Q. As well as the minute book? A. Yes.

Q. The Constitution? A. Yes. [373]

Q. (By Mr. Mouritsen) Are these the minutes which you received, Mr. Alley, from your predecessor in office? A. They are. [381]

The hearing was resumed, pursuant to the taking of adjournment, at 9:30 o'clock a.m. [388]

ARTHUR STEUART

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

(Testimony of Arthur Steuart.)

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Steuart?

A. 151 North Sparks Street, Burbank.

Q. Do you at this time sell the Evening Herald and Express? A. I do.

Q. And the Daily News? A. I do.

Q. And at what spot do you engage in those operations?

A. At the corner of Santa Monica and Western Avenue.

Q. Where did you first start to sell the Evening Herald and Express? [390]

A. I first sold the Evening Herald and Express at the corner of Hollywood Boulevard and Highland Avenue.

Q. And who put you on that spot?

A. Kenneth France.

Q. He is the district manager for the Evening Herald and Express? A. He is.

Q. And approximately when was that?

A. February 1932.

Q. How long did you remain on that spot?

A. I remained on that spot until May of 1933.

Q. And what occurred at that time?

A. Well, at that time I had a run-in with the man who operated the drug store on the corner there. He called the Evening Herald and Express and said I had done some things that I had not done. Mr. Brewster came out, saw the man, and he fully

(Testimony of Arthur Steuart.)

agreed that I was right, but the man insisted that I be taken off the corner, so Mr. Brewster saw to it that I had a transfer to another corner.

Q. After that time were you transferred to another corner?

A. I was transferred next day to Hollywood and Western [391] Avenues, and then I was transferred the following week to Hollywood—I mean Santa Monica Boulevard and Western Avenue.

Q. By whom were you transferred the next time?

A. By Kenneth France.

Q. And is that where you sell at the present time, Santa Monica?

A. That is where I sell now.

Q. During what hours do you sell the Evening Herald and Express?

A. My hours are from ten o'clock in the morning until nine o'clock in the evening, but I have a man come down at seven o'clock and relieve me and works until nine.

Q. Has the Herald and Express District Manager ever said anything to you regarding the hours that you are to work?

A. That was the orders that were given to me when I first went on the corner, to be there at ten o'clock and that I would work until nine, but the idea is all the way through the district and the man quits at seven and another man takes his place until nine, at the corners that work until nine.

Q. Who was the district man that so instructed you? A. Kenneth France.

(Testimony of Arthur Steuart.)

Q. Now, after you were given those instructions, have you ever had any conversation with Mr. France regarding those orders? [392]

A. Not regarding those orders, no. At times, why, we have had calls where we were to come in earlier, and at times we have had calls where we were to stay late.

Q. From whom?

A. From Kenneth France.

Q. Did Mr. France ever have a conversation with you regarding the fact that you were not on the corner during those hours?

Q. Well, have you had any such conversation with Mr. France during the past year?

A. Well, I would say anywhere from six to nine months ago.

Q. Where did this conversation take place?

A. On the corner.

Q. And who were present?

A. Just Mr. France and myself. He called me to his car and [393] showed me a slip that he had, a yellow slip that he said was given to him, the spotter who drives through the district had come by the corner and on the slip it was written out the different corners that were checked. My corner appeared and at the hour of 8:58 no hustler, no papers.

Q. And after Mr. France showed you that, did you have a conversation with him regarding that?

A. He told me I should take up the matter with the man who works on the corner to be there until nine o'clock, never to leave before nine o'clock.

(Testimony of Arthur Steuart.)

Q. Did you have any further conversation with him at that time?

A. That was about all.

Q. Were you on this corner at Santa Monica and Western when the newsboys, the Evening Herald and Express newsboys, started to handle also the News? A. I was.

Q. And I believe that date has been fixed as on or about November 1, 1937. Now, will you explain, Mr. Steuart, just what occurred at that time and what instructions, if any, you received from Mr. France regarding the handling of the News? [394]

The Witness: Mr. France called me to his car and told me that beginning the following Monday, whichever date that was, that we would begin to handle the Evening News and that we were to carry the News at all times on the inside of our paper. Later on it came up that we were to put them on the outside of our paper, where they were to be seen.

Q. (By Mr. Mouritsen) And after that time did you receive a check from the News?

A. Yes, sir, I do.

Q. And do you also at the present time receive a check from [395] the Evening Herald & Express?

A. Yes, I do.

Q. Will you explain just what your duties are, and how you engage in your operations at the present time?

A. My duties are to be on the corner to receive the papers when they get there and work until the hours that I have told.

(Testimony of Arthur Steuart.)

The Witness: I supply the boys who work on the corner for me with papers, check them in, and check in to Mr. France.

Q. (By Mr. Mouritsen) Have you ever received any instructions from the district manager of the News regarding the manner of displaying the News?

A. Yes, I have, a few times.

Q. Who is the manager who gave you such instructions?

A. I could not tell you his last name. All I know is his name is Willie. I got it from you one day but I can't remember what it was. It was an odd name.

Q. Has he given you such instructions on more than one occasion? A. He has. [396]

Q. On approximately how many different occasions?

A. Oh, I would say four or five different occasions.

Q. And within what period?

A. Since I have been handling the News.

Q. Now, would you state in general just what those instructions are?

A. Well, the trouble seems to be in the way that we carry the News, and the way it is handled. They wanted me—as I said before, first we were told to carry the papers inside the Herald and they came out and wanted us to carry them on the outside and said that was the agreement. Later on that was changed and they wanted me to carry a paper in

(Testimony of Arthur Steuart.)

the opposite hand of what I carried a Herald so that it can be seen, displayed.

Q. Prior to the time when the papers were consolidated, Mr. Steuart, that is, the handling of the papers, did you receive returns from the Herald-Express? Were you permitted to return all unsold copies? A. No, sir, I was not. [397]

Q. (By Mr. Mouritsen) After you started to handle both papers, on or about November 1, 1937, did you on a number of days report to the branch office of Mr. Brewster?

A. You are talking about the time of the change-over, when the price went up to five cents, November 1st, 1937?

Q. That is the time.

A. We were to report to the office for three days, at just our orders to bring them down, because the paper naturally would drop off going from three cents to five cents, and to bring our orders down to meet the demand at that time.

Q. From whom did you receive instructions regarding your reporting, if anyone?

A. From Mr. France.

Q. And did you so report? A. I did.

Q. On these occasions when you reported to the branch office, will you explain what occurred, what you did and what anyone else there did? [398]

A. Well, I placed my order for the next day accordingly, to what I had sold that day.

Q. And after that three-day period what was

(Testimony of Arthur Steuart.)

done with reference to the number of papers that you received from the Evening Herald-Express?

A. Well, after the three-day period I placed a standing order which I would receive every day.

Q. Now, since that time have you been permitted to make returns of unsold copies that you have had left over?

A. Only on two or three occasions.

Mr. L. B. Binford: You are talking now about the Herald & Express only?

Mr. Mouritsen: That is right.

Q. Will you explain what these two or three occasions were, what occurred on those times

A. Well, a couple of times that the paper was real late getting on the corner, didn't get to the corner until about 6:30, where they usually get there before 6:00, and there was an agreement made by Mr. France that I would be able to turn in the copies for that night, and then here a few weeks ago when this war business started, where Germany started into Belgium and Holland, why, the first day we were loaded up very heavily with papers and Mr. France told me that he would be able to return any unsold copies that evening.

Q. When you say you were loaded up with papers, were those [399] papers in addition to the regular amount that you received?

A. Yes, sir. They were considered as extra copies.

Q. Did you order that extra amount of papers?

(Testimony of Arthur Steuart.)

A. No. No time do I order an extra amount of papers unless—that is, during the period of my work if I see papers are going to go I can phone in and order them, but when there is an extra or anything like that breaks they are sent out to me on the corner without my knowledge of how many I will get.

Q. At the time, November 1, 1937, the price of the Evening Herald & Express was changed; is that correct? A. That is right, yes.

Q. How were you notified of that change in price?

A. Mr. France called me to his car and asked me if I had heard the change was going to take place. I told him I had not. He told me that the paper was going to five cents and that the newsboy would receive two cents profit from the paper.

Q. Prior to that time when you started to handle both the Evening Herald & Express and the News had you received any instructions regarding the handling of the News?

A. Prior to that time?

Q. Prior to the time.

A. Yes, sir. I was told at no time to ever handle the News. If a man came up and asked me for a News, if the man [400] was not on the corner I should tell him that I could not sell him the paper; I was not selling the Evening News.

Q. From whom did you receive such an instruction? A. From Mr. France.

(Testimony of Arthur Steuart.)

Q. Have you ever received any instructions from any district manager regarding publications that you were not to handle?

A. Yes, I have, from Mr. France.

Q. And approximately when did you receive such instructions?

A. Oh, within the last year.

Q. And what have been such instructions, and relating to what publications?

A. Well, there was some racks on the corner where there would be the People's World, the Hollywood Tribune, I believe was the name of it, the Sports Weekly, and the Ham and Eggs paper, and I was told by Mr. France that if I was handling those I would have to quit handling them because it was not allowed by the Evening Herald & Express, that I was only to handle papers that were authorized by the Evening Herald & Express.

Q. Have you ever had any discussion with Mr. France regarding a boy to relieve you? [401]

The Witness: Yes.

Q. (By Mr. Mouritsen) And approximately when did you have such a conversation?

A. Well, in 1935 I wanted to take a month off and go East, and I told Mr. France that I had a boy to take my place on the corner, and he said well, that wasn't his policy, that his policy was to put some one on the corner who worked for him.

Q. And did you take a vacation?

A. I took the vacation.

Q. And did the man you had selected as relief

(Testimony of Arthur Steuart.)

handle the corner during that time while you were on your vacation?

A. No; Mr. France put the man on the corner.

Q. Now, from time to time during the past three years, Mr. Steuart, have you received advertising placards regarding the Evening Herald and Express? A. I have.

Q. From whom?

A. From Mr. France. [402]

BOARD'S EXHIBIT No. 7

(Herald and Express Cardboard Circular)

Motion Picture Contracts—Screen Tests—Scholarships.

Hundreds of Other Prizes.

Phone Exposition Editor for Details.

Los Angeles Evening Herald and Express.

Q. (By Mr. Mouritsen) Now, with reference to such advertising placards, that is, Board's Exhibit No. 7, have you received any instructions from Mr. France with reference to them?

A. Yes. We have boxes that we put our papers on, there is little notches made in the box for these placards, that these placards will fit into, and I am told to give those to the boys who work for me and have them put in the boxes.

Q. And do you have such a box? [403]

(Testimony of Arthur Steuart.)

A. Yes.

Q. Who furnished that box?

A. The Evening Herald and Express.

Q. It is not your box; is that correct?

A. No, it is not.

Q. And after receiving such instructions, have you carried them out? A. I have, sir.

Q. At the present time do you have any racks for the display of the News? A. I do.

Q. And are those your racks?

A. They belong to the Evening News.

Q. Have you ever received any instructions from your News District Manager with reference to such racks? A. Yes. [404]

Q. (By Mr. Mouritsen) Have you on more than one occasion received instructions with reference to those racks? A. I have.

Q. On approximately how many different occasions?

A. I couldn't say the approximate number. I am told every once in a while that I am to keep the papers displayed in that rack at all times.

Q. Well, now, during what period have you received such instructions?

A. During the time that I have handled the News.

Q. And that is since November 1, 1937, to the present time? A. That is right.

Q. Are you a member of any labor organization, Mr. Steuart?

A. Nothing other than the Union #75, Local Industrial Union.

(Testimony of Arthur Steuart.)

Q. That is the Newsboys Union?

A. Yes, sir. [405]

Mr. L. B. Binford: The Stockholders Publishing Company moves that all testimony of the witness respecting the report by Mr. France, district man of the Herald and Express, regarding a spotter of the Herald and Express, be stricken in so far as the Stockholders Publishing Company is concerned.

Trial Examiner Kennedy: What do you have to say on that?

Mr. Mouritsen: Well, Mr. Examiner, the Examiner is acquainted with the information that has already been put in the record regarding this agreement between the Evening Herald and Express and the News with respect to the handling of the papers by a single set of newsboys. Now, in order not to conflict with that, I would oppose the granting of this motion.

Mr. L. B. Binford: There is not one scintilla of evidence before this Examiner or in the record to the effect that there is any common relationship between the papers with respect to their district men, or instructions given by their respective district men, nor with respect to the use of advertising matter, or racks, or anything of that kind. The only testimony is a small body of testimony so far, although [407] it has been offered in the form of stipulation, that the same newsboys sell the Herald and Express in some instances and the News. Now, certainly we are not bound by spotters of the

(Testimony of Arthur Steuart.)

Herald and Express, nor what the district man of the Herald and Express has to say to this witness respecting the handling of the Herald and Express; and we were very careful in our general motion to not include any testimony the witness gave respecting any instructions that he received from our district man, and he admits we have a separate district man; or with respect to any instructions which this witness says that he received regarding the placing of papers, or the handling of our rack, or our box, or anything of that kind, we are not including; but they are separate and distinct organizations in so far as the district man and method of handling are concerned.

Trial Examiner Kennedy: Well, do you agree with this last statement, Mr. Mouritsen, that any instruction given the vendors by the Herald & Express men could not possibly be construed as instructions of the News? Or is it your contention that there is an intermingling there, that you are going to establish by the evidence—an intermingling, or transmission of authority or direction?

Mr. L. B. Binford: With the district man.

Mr. Mouritsen: That is right.

Trial Examiner Kennedy: Or something along that line. [408] That is the only basis on which I could see that this testimony should stay in with respect to the News.

Mr. Mouritsen: I think the Trial Examiner has stated the position of the Board in that matter very

(Testimony of Arthur Steuart.)

well. The difficulty is we have not been able to go into that relationship more fully. It will be gone into at the time when the case—when the evidence or matter regarding the News is presented, and after such time perhaps we could determine more fully just what the exact nature of that relationship is. At the present time the record is not in such a shape to permit a correct appraisal of that.

Mr. L. B. Binford: I direct counsel's attention to the fact that there have already been three district men introduced by the Union—called by the Union for the Herald & Express, and no effort whatsoever was made to tie in their having any authority to act or speak for the Daily News. And the circulation manager of the Herald & Express has been called and recalled and recalled and no effort has been made to tie in any such point—or authority with respect to the common employment of any district men. And I direct attention also to the fact that yesterday on many occasions, on similar motions, not only were they sustained by the Examiner but the counsel joined in a stipulation in two or three instances that such testimony should not be held to be binding upon the Stockholders Publishing Company, publishers of the [409] News.

Trial Examiner Kennedy: Well, I do not know those situations are exactly the same as the one testified to here this morning.

Mr. L. B. Binford: I think with respect to the newsboys they were.

Trial Examiner Kennedy: I think we are en-

(Testimony of Arthur Steuart.)

titled to know what your offer of proof is along that line, Mr. Mouritsen. Do you offer to prove that there is an intermingling here, or do you not?

Mr. Mouritsen: Well, Mr. Trial Examiner, I am not prepared at this time to make an offer of proof in that respect. I call attention to the fact that inquiry was made of the circulation manager of the Evening Herald & Express regarding these conferences between the publishers, at which this matter was taken up. I think you will recall that his recollection with reference to what was done and said at those conferences was very poor. I am merely going to attempt to ascertain with more particularity from other witnesses what occurred upon this conference, and I think upon that basis only can an appraisal of the relationship be determined.

Mr. L. B. Binford: In the present state of the record might I suggest the Stockholders Publishing Company will be perfectly willing to stipulate if the motion as originally made by Stockholders' counsel is granted that if any testi- [410-11] mony sufficiently persuasive to convince the Examiner that there is an intercommingling of relationships between the district men of the two papers, or if the district man of one paper has any right to represent the other paper in any shape, form or fashion, we will stipulate that the testimony which should go out in the present state of the record may be reinstated.

Trial Examiner Kennedy: I think that is a

(Testimony of Arthur Steuart.)

proper solution and I will grant the motion in its entirety to strike as to the Stockholders Publishing Company without prejudice to reconsideration of that motion, and a motion to reinstate should the record show that the authority of any of these men who have given instructions to this witness—that they are speaking for the Stockholders Publishing Company.

Mr. Compton: If the Examiner please, I would like to make the same motion, and offer the same stipulation, in reference to the testimony of this witness concerning alleged directions given him, and other matters of so-called control exhibited by the district manager of the News.

Trial Examiner Kennedy: Well, now, you will have to be a little more specific on that.

Mr. Compton: My recollection is that the witness testified that he was given certain instructions by the district manager of the News, in reference to the manner of displaying the News, and possibly there was other testimony along that [412] line. My recollection is not too clear on that, but it would seem to me that the motion, though general, is sufficiently specific to identify the matter if I state it in the form of objecting to any testimony offered by the witness concerning instructions given to him by any district manager of the News. That would seem to me—in other words, that any such testimony would be not binding on the Los Angeles Evening Herald & Express.

(Testimony of Arthur Steuart.)

Trial Examiner Kennedy: What do you have to say to that, Mr. Mouritsen?

Mr. Compton: Mr. Mouritsen, you understood I offered the same objection and the same stipulation?

Mr. Mouritsen: Well, I understand that. However, I think it is the Trial Examiner's prerogative to pass upon the offer of any motions made. I will be willing to agree with Mr. Compton upon any motion considered here by the Trial Examiner in the record.

Trial Examiner Kennedy: Well, is the situation any different as to the representatives of the News giving this man instructions? Do you think the record showed that they had any authority to bind the Herald & Express?

Mr. Mouritsen: Well, there again, Mr. Examiner, I am not in possession of the facts and it is because of the difficulties that I pointed out before. In other words, this agreement, if agreement there was, was made by the representatives [413] of the publishers. Now, I am compelled to seek to ascertain the nature of that agreement and just what it embodies from the representatives who made such an agreement, if there was such an agreement.

Trial Examiner Kennedy: And you don't know what that agreement was, if it existed?

Mr. Mouritsen: That is right, Mr. Examiner.

Trial Examiner Kennedy: Have you made any effort to ascertain what it was?

Mr. Mouritsen: I think, if you will recall, from Mr. Harrison.

(Testimony of Arthur Steuart.)

Trial Examiner Kennedy: And you contend that his testimony establishes such an agreement, one that will permit the supervisors of one paper to bind the other paper in their instructions to vendors

Mr. Mouritsen: I am only able to state, Mr. Examiner, that from Mr. Harrison's testimony the situation is not clear. In other words, we have on the one hand the facts established that these men, these newsboys, took over the handling of both papers, that they after that time were given instructions with reference to the handling of those respective papers. Now, on the other hand, the management or the publisher, Mr. Harrison, has testified it was made for their mutual benefit. Now, we are seeking to determine just what the nature of that agreement was. [414]

Trial Examiner Kennedy: You say that the gist of his testimony was for the mutual benefit?

Mr. Mouritsen: That is the way I understood the testimony, Mr. Examiner.

Trial Examiner Kennedy: Well, I have some doubt as to what that testimony was, and in that event I will deny the motion.

Mr. Compton: If the Court please, I didn't want to interject, but I did want to be heard before your Honor ruled. This much is true: Mr. Mouritsen had full control of the manner and way in which he put on his testimony. I am not going to object if he puts on testimony out of order, but I am going to call the Examiner's attention

(Testimony of Arthur Steuart.)

to this fact, that he has known these men were selling these papers for some considerable time; that he has been in contact with me and he has, I think he will admit, received full cooperation from me. He has been permitted—I have produced every witness he has asked for. He chose to start his case by attempting to show the general picture first. That was the way he chose to bring the facts to the attention of this Examiner, and in pursuance of that plan he called the general officers first and interrogated them generally on the whole setup.

Now, Mr. Harrison testified concerning that agreement. He testified that it was nothing more than an acquiescence of the two managements that they would not object to newsboys [415] selling a publication which competes with theirs. He did testify it was for the mutual benefit of the newspaper and the boy. By that testimony he meant that it made the boy more money, it made him a better businessman because he was making a profit, and it attracted a better class of men; and if your Honor will go back into the testimony, you will find that that was the mutual benefit—not mutual benefit to the two papers.

Now, in addition to that fact, Mr. Mouritsen has put on district men and he has elicited from his own witnesses that as to the Evening News they took their instructions from the Evening News district men, and this very witness, as to the man-

(Testimony of Arthur Steuart.)

ner of displaying the news, testified he took his instructions from the News district man.

Our district men, he has put them on, three or four of them, and they have always testified they handle only the Herald and Express, they give instructions only with reference to the handling of the Herald and Express. There isn't a scintilla of evidence to establish anything other than that the management of the respective papers have agreed that they will not object to news vendors selling a publication which competes with theirs, and that is all there is in this record.

Mr. Mouritsen: Mr. Examiner, I would merely like to point out that in respect to this arrangement being for the mutual [416] benefit of the paper and the newsboys, that it wasn't pointed out by Mr. Harrison how this was to the mutual benefit of these newsboys who were eliminated by the consolidation.

Mr. Compton: There is no testimony in the record there was any elimination. It seems to me, if the Court please, that we are certainly entitled, in view of the fact that the control of the manner of producing the testimony is in Mr. Mouritsen's hands, he has been furnished every witness he has asked for, and he still now complains that some time in the future he is going to connect it up. He could have done it with the very first witness, and yet we are asked to sit here and see this testimony go into the record, possibly to be stricken, if we can remember it all and get it to the atten-

(Testimony of Arthur Steuart.)

tion of the Examiner, solely because of the fact that he doesn't want to or he refuses to accept the fact that the evidence he thinks exist doesn't exist. There is no reason why we should be penalized because he doesn't put on his case in the proper fashion. If he thinks there is control, he could have established that by the very first witness he put on the stand. He has never asked for any other witnesses.

Trial Examiner Kennedy: Well, as a practical matter, you can't be penalized, as far as I can see. All this testimony is in the record regardless, and if the final record, the complete record, does not tie the story of a particular witness up to a particular paper, no finding can be made that it does [417] on the entire testimony, and there is no contention here that anything should be physically stricken from the record; so as far as penalizing any party, that is more apparent than real—that is, that is not a fact, as far as I can see. There is some question in my mind as to exactly what the testimony of Mr. Harrison was in that respect, and although I believe the Board's attorney, or the attorney for the union, or whoever is prosecuting the case, should have the theory of his case in mind, and we certainly are not going out on a fishing expedition where I don't know what we are bringing out, still if there is some evidence to the effect that the supervisors of one paper bind the other paper in their dealings with the vendors, I

(Testimony of Arthur Steuart.)

think at this point the testimony should be allowed to stand as to the other paper.

The motion to strike can be made at the close of all testimony with the same effect as it can be made now, and the ruling is made without any prejudice to making such a motion at that time.

Cross Examination

Q. (By Mr. Compton) Mr. Steuart, you are what is termed a "wholesaler," aren't you?

A. That is the term that has been given here in the courtroom, I believe.

Q. Well, by that I mean papers are delivered to your corner and you deliver them to so-called off spot boys and you re- [418] ceive a check for that, don't you? A. I do.

Q. Now, these boxes you testified concerning, they are just ordinary wooden boxes, aren't they?

A. They are.

Q. And they are given to you, aren't they?

A. They are.

Q. And the purpose of them is only to lift the papers up off the street so they won't be molested by dogs or by passersby, isn't it?

A. For that and for display purposes.

Q. Now, these placards that you testified concerning, they advertise special features in the Herald & Express, don't they? A. They do.

Q. And they help you sell your papers, don't they?

A. I imagine that is what they are for.

(Testimony of Arthur Steuart.)

Q. In fact, they do increase the sale of your papers, don't they? A. I believe they do.

Q. And you make more money when you sell more papers, don't you? A. I do.

Q. That is right. You testified that in February 1932 you were selling papers at the corner of Hollywood and Highland [419] and that you had a run-in with the drug store and that you were falsely accused. What was the nature of the accusation?

A. Do you want me to tell what happened in the drug store; is that it?

Q. I want you to tell me what you meant by being falsely accused by this drug store man.

A. Well, the man who owned the drug store had a fight in the store with one of his clerks and he had the clerk over a marble machine and was choking him, and another man and myself stepped in and separated them, pulled him off the man he was choking, and the man he was choking reached over and picked up an iron bar and hit him over the head with it and split his head open; and so he called the Evening—first, he came to me and asked me if I would go into court and make a witness for him, and I told him I would make a poor witness because I figured it was self defense; and he asked me what paper I worked for and I told him and he said, "I will have you taken off this corner." And he called the Evening Herald and Express and they sent a representative out to see the man, which was Mr. Brewster and

(Testimony of Arthur Steuart.)

Mr. France, I believe. Mr. France came out to the corner and asked me——

Q. That is all. Up to that point. I just wanted to find out what it was. What did he falsely accuse you of? I still haven't found that out.

A. I was going to work up to that if you had given me time. [420]

Q. All right.

A. I was going to tell you the accusation made to Mr. Brewster and Mr. France. Mr. France called me into the drug store and Mr. Brewster asked me my side of the story. He had heard the other man's side of the story. The man claimed I had held him while the other man hit him over the head with the iron rod. That was the accusation.

Q. How long did you stay there after the incident occurred?

A. I didn't stay there another minute. I was taken off of that spot.

Q. Was that a good corner that you were on, Hollywood and Highland?

A. It was a good corner.

Q. (By Mr. Compton) As a matter of fact, the change you made afterwards caused you to make more, didn't it?

A. It was a little better corner, yes.

Q. So you suffered no harm, no financial detriment, by being removed from the corner?

A. I did not.

Q. What other publications do you sell besides

(Testimony of Arthur Steuart.)

the Evening Herald & Express and the News? [421]

A. Besides the Evening Herald & Express and the News? I sell the morning Examiner and the Times.

Q. And do you sell the Saturday Evening Post?

A. I sell the Saturday Evening Post and Liberty.

Q. Do you sell Collier's?

A. Collier's and Look, yes.

Q. Do you sell Look? A. Yes.

Q. Now, you testified that when you were loaded up with extras, and by that you meant that extras were sent out without any order from you?

A. Yes.

Q. In truth and in fact, every time that occurred and you were unable to sell those extra papers you were permitted to return them?

A. I was not.

Q. You were not? A. I was not.

Q. Didn't you have at all times full control over your order? A. I have not.

Q. You mean to say you can't regulate your order now?

A. If I can regulate my order?

A. Yes.

A. My regular order or extras how is what I want. [422]

Q. Well, you testified you never did order any extras. You testified they were sent out without order?

(Testimony of Arthur Steuart.)

A. The regular order I can regulate to some extent.

Q. What do you mean "to some extent"? You can regulate your order, can't you?

The Witness: I will explain that now, how I can regulate my order. Up until the past few months my order has been a standard order; if I wanted to regulate it I had to take them off of one edition and put it on another edition. For the past few months Mr. France has given me the privilege to take off a few papers where needed. Up to that time I wasn't.

Q. Isn't it a fact whenever you phone in an order you can raise it or lower it?

A. No. I can raise it but I have never been able to lower it without going to Mr. France, and that was just on one occasion he allowed me to take off papers in the last few months.

Q. You testified to three different occasions he allowed you to take off papers. [423]

The Witness: You say three different occasions?

Q. (By Mr. Compton) Yes.

A. Would you give me the three different occasions?

Q. I will have to go back. You said, "I have since then been permitted to make returns." You stated that on two occasions when the paper was late you were permitted to make returns.

A. That wasn't regulating my order. That was making returns on those three occasions I spoke

(Testimony of Arthur Steuart.)

of, but that wasn't my regulating my order. That is what you asked me.

Q. Well, isn't it a fact that when you want to, when the early editions are going bad, you think it is a bad day, you can call up and say you want less papers?

A. Of the next edition? No, sir.

Q. Do you mean to tell me you are taking the same order today and yesterday that you took three years ago?

A. No. As I spoke before, in November 1937 we changed those orders and since then the only place the order varies is on the night final edition. I am allowed to order my papers on the night final edition. I don't have to take one paper, or I can take as many as I want. That is to regulate my order on that edition.

Q. Doesn't that result in a regulation of your entire take? A. It does not. [424]

Q. How many papers do you take during the day? A. About 400.

Q. About 400? A. Yes.

Q. Now, how many papers do you take on the night final, or of the night final?

A. Of the night final?

Q. Yes.

A. On an average I take around a hundred papers.

Q. Now, you have just testified that you can take as many or none of the night edition as you want, haven't you? A. That is right.

(Testimony of Arthur Steuart.)

Q. Isn't it a fact, in truth and in fact, that your order varies from day to day from three to four hundred? A. It does.

Q. And that is subject to your control as you just testified?

A. On that one edition, yes.

Q. Now, you testified concerning the so-called change in price. Do you read the newspapers yourself? A. I do.

Q. Don't you know for a fact that for ten days to two weeks prior to the change in price of the Herald and Express it was carried on the front page, the price change?

A. I don't know the number of days. I know it was carried [425] on the paper.

Q. That is where you saw it then, wasn't it?

A. I was told first by Mr. France. I never saw it in the paper first.

Q. The change in price was carried approximately ten days before it went into effect, wasn't it?

A. I really couldn't say the matter of time. It was carried in the paper, I will agree.

Q. And you saw it there, didn't you?

A. I saw it there.

Q. Now, you testified concerning a period at which you were notified not to handle the News. Do you recall that? A. Yes, sir.

Q. In truth and in fact, wasn't it the News district man that said you were not to handle the News? A. No.

Q. Are you sure of that? [426]

(Testimony of Arthur Steuart.)

A. The Herald district man is the one who told me that.

Q. Are you sure—— A. I am.

Q. ——that the district man of the News did not say, "You can't handle the News if you handle the Herald"?

A. Those are exactly the words he told me.

Q. The News district man told you that?

A. No. The Herald man told me that.

Q. Didn't the News district man tell you——

A. The News district man——

Q. Just wait. Didn't he tell you that you could not handle the News as long as you were handling the Herald; that they wanted a separate product handled in their organization?

A. He never spoke to me one way or the other about it; the News district man did not.

Cross Examination

Q. (By Mr. L. B. Binford) Mr. Steuart, the money that you make from the sale of Look, Collier's, the Post, and other publications not including the Herald and Express or the News, is all retained by you, is it, as profit?

A. Yes, sir.

Q. You do not make any accounting for that to anybody except to yourself, do you?

A. No, sir. [427]

Q. And you have, during the period of time that you have been selling both the News and the Herald and Express, which is from November 1, 1937, I be-

(Testimony of Arthur Steuart.)

lieve, you have received and you have had your dealings with district men from both papers, have you not? A. I have.

Q. Do you remember the name of the district man that you have talked with from time to time who represents the News?

A. All I could tell you, his name is Willie.

Q. All you can remember is that his name is Willie?

A. I don't know his last name. It is an odd name. He told me what it was, but I have forgot it.

Q. Now, is the man whose name you refer to as Willie—he is a district man, isn't he?

A. I believe that is his capacity.

Q. You yourself are a wholesaler; that is, you distribute papers to the boys on the corners?

A. That is what I am termed, is a wholesaler.

Mr. Mouritsen: I believe, if I recall, you are the witness who told me you could recall the name if I supplied it. I have discovered the name, if you——

Mr. L. B. Binford: I would be glad to have you state it for the purposes of the record.

Mr. Mouritsen: That is Willie Matz.

Q. (By Mr. L. B. Linford) Is that the name as you recall it? [428] A. That is the name.

Q. Now, you have been selling the News for a period of about two years and a have in conjunction with the sale of the Herald & Express?

A. Since November 1st, 1937.

(Testimony of Arthur Steuart.)

Q. And you were furnished, you testified, with certain racks; is that right?

A. That is right.

Q. Now, what are those? Metal racks or wooden racks? A. Metal racks.

Q. Do they have a place on which you can place the papers?

A. A place in which the papers are displayed, yes, sir.

Q. Where the paper can be displayed?

A. Yes, sir.

Q. Do they hold more than one paper?

A. Yes, sir.

Q. How many will they hold?

A. I would say—well, it depends on the size of the paper. It would hold on an average of 15 papers.

Q. That rack is furnished you for your convenience, is it?

A. It is furnished for the convenience of the paper.

Q. And for the purpose of helping sell the paper and displaying it? A. That is right.

Q. You appreciate that rack, don't you? It is of value to [429] you, isn't it? A. It is.

Q. Did you pay any money for it?

A. I did not.

Q. It was furnished you free of charge?

A. That is correct.

Q. You knew when you got the rack in a general way what is was to be used for, didn't you?

(Testimony of Arthur Steuart.)

A. I was told that rack was to be——

Q. Suppose nobody had told you. Would you be able to guess what it was to be used for?

A. I would, yes, sir.

Q. Yes. You could pretty near have told by just looking at it, couldn't you?

A. That is right.

Q. You state that the man told you what it was for, but you would have used it for that if he had not told you, wouldn't you? A. I would.

Q. Now, you say that he came around and told you that several times. Did you have to be told that more than once?

A. Well, I told you if a paper happened to be out of the rack he told me that that was what the rack was to be used for. You see, there was four corners there and until the other boys came to work in the afternoon I handled all four [430] corners, and a man would walk up and take a paper out of the rack and I might not notice it.

Q. It might be the last paper?

A. I only keep one paper in the rack because people take papers out of the rack, and if you don't notice them take it they don't leave the money; whereas, if you only have one paper in the rack and if I see it is gone, it is more noticeable, and I will look around to see where the paper is.

Q. You like to use the rack, don't you? You think it is a good thing to have it there, don't you?

A. A rack of some—some form of display.

(Testimony of Arthur Steuart.)

Q. Some form of display. Yes. Now, you testified that Willy gave you instructions respecting the use of the rack many times, or, to use your exact words, several times. He did not give you any instructions, did he? There was only one purpose for which the rack could be used?

A. That is right.

Q. And you knew that when you first saw the rack? A. That is right.

Q. So the only thing he told you was when he would see perhaps you would overlook putting a paper in there, that it would be a good plan to keep a paper in the rack? A. That is right.

Q. To help you sell your papers?

A. That is right. [431]

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Steuart, I believe you testified on cross examination that you also sell the Times and Examiner; is that correct?

A. That is right.

Q. Will you tell us just what that consists of?

A. Sell the papers that are left by the man who sells the Examiner and Times in the morning. He leaves them in the rack on display. I don't carry the Examiner and Times. I just leave them there. Any that are sold, I just take the money and check in to him in the evening.

Q. That, in general, is just a few papers left over by the man—— A. That is right.

(Testimony of Arthur Steuart.)

Q. By the newsboy for the Times or Examiner; is that correct? A. That is right.

Recross Examination

Q. (By Mr. Compton) Mr. Steuart, if you sell those papers do you make the profit on them?

A. I do.

Q. As a matter of fact, you get on the corner early so you [432] can sell the Times and Examiner, don't you?

A. I get on the corner at the same time I am told to be there—10:00 o'clock.

Q. Do you after that time sell Times and Examiners? A. I do.

Q. Now, during your selling activities you do not confine yourself exclusively during the day to any one publication, do you? In other words, during the day you sell whatever anybody wants to buy?

A. What anybody asks for, exactly.

Q. Saturday Evening Post, Collier's, the News, anything that you have to sell? A. Yes.

Q. You do that all day long? A. I do.

Q. And you do not devote your services exclusively to any one publication? A. I do not.

Mr. Hall: You are not offering this as against the Los Angeles Examiner, are you?

Mr. Mouritsen: No, it is not claimed that is in explanation of anything in regard to the Examiner. [433]

Mr. Cosgrove: Would it be stipulated, Mr. Mou-

(Testimony of Arthur Steuart.)

ritsen, the testimony of Arthur Steuart has no application to the Times case?

Mr. Mouritsen: No, it is not claimed that this man is within the union—claimed to be a probative man on that basis.

Redirect Examination

Q. (By Mr. Mouritsen) Now, Mr. Steuart, did you carry in your hands or arms any publications during the day other than the Evening Herald & Express and the News?

A. Carry in my arms or hands? I do not.

Q. Who supplies you with the magazines, Saturday Evening Post and Liberty, that you sell?

A. Joe Woods.

Q. That is the district man for the Los Angeles Evening Herald & Express? A. He is.

Q. He is not the district man in your district, but——

A. No, he is the district man for the Evening Herald & Express.

Mr. Mouritsen: I think that is all.

Recross Examination

Q. (By Mr. Compton) These other publications you have testified to are pretty heavy, aren't they? Isn't a bundle of Saturday Evening Posts pretty heavy? [434]

A. I don't handle them in bundles. I lay the bundle on the sidewalk.

Q. Well, I say, the bundle would be pretty heavy? A. They would.

(Testimony of Arthur Steuart.)

Q. They are a weekly publication?

A. That is right.

Q. There wouldn't be any point in carrying them around in your arm anyway, would there?

A. Not that I know of.

Q. No. And they are right there at your corner for the purpose of sale like any other publication?

A. That is right.

Q. Just as available as any other publication, the Evening Herald and Express or the News?

A. That is right. They are right there on the corner. [435]

Trial Examiner Kennedy: Are you referred to as a check man?

The Witness: A check man, yes.

Trial Examiner Kennedy: What does that mean?

The Witness: I draw a check from the Evening Herald and Express and from the Evening News, for my services on the corner.

Trial Examiner Kennedy: How often do you draw those checks?

The Witness: Weekly.

Trial Examiner Kennedy: In addition to that you get a profit on the papers that you sell, do you?

The Witness: I do. [436]

Trial Examiner Kennedy: Anything further from this witness? Do you belong to the Newsboys Union? [439]

The Witness: I do, sir.

(Testimony of Arthur Steuart.)

Redirect Examination

Q. (By Mr. Mouritsen) Now, Mr. Steuart, will you explain just how you receive your papers during the day, the various editions?

A. They are delivered to me by truck.

Q. I see. And there are five or six of those different editions, is that correct?

A. We receive six in Hollywood. There are seven editions, I believe, to the paper. We receive six in Hollywood.

Mr. L. B. Linford: That is referring to the Herald and Express papers?

Mr. Mouritsen: That is correct. That is with reference to the Evening Herald and Express?

The Witness: That is correct, yes.

Q. (By Mr. Mouritsen) Now, how many of those papers on the various editions do you receive during the day? How is that determined?

A. By my order on the galley.

Q. And can you change the numbers of the editions other than the final edition, I believe it is, that you receive? [439-A]

A. I can change them from one edition to the other. I can take them off of the first edition and put them on the third, we will say, or I can take them off the third and transfer them to the second, that way, transfer them around.

Q. But up until the final edition you are permitted only to make changes within those editions, the total number remaining the same, is that correct?

(Testimony of Arthur Steuart.)

A. The total number remains the same as my standing order.

Q. I believe you stated that you obtained between three and four hundred papers a day from the Evening Herald and Express?

A. That is right.

Q. Does that include the papers that you give to the other boys on the three corners?

A. That includes the papers that I give out to the other corners.

Q. And on the other corners that you in turn supply, when do those newsboys come to work?

A. I have two corners that come to work at 12:30 and one corner at 2:30. Then I have a boy at Sears Roebuck goes to work at 4:00 o'clock.

Q. 4:00 o'clock in the afternoon?

A. 4:00 o'clock in the afternoon, yes. [439-B]

Recross Examination

Q. (By Mr. Compton) Mr. Steuart, how many Heralds do you personally sell per day on an average?

A. Under ordinary conditions, around 150.

Q. Do you know on an average how many News you sell per day?

A. Ordinarily I will sell around 75 or 80.

Q. Do you know how many Saturday Evening Posts you sell per week? A. Personally?

Q. Yes.

A. I couldn't say. I take out 60 Saturday Evening Posts and myself personally I cannot say how many of those I sell.

(Testimony of Arthur Steuart.)

Q. Do you know how many Libertys you take out? A. I take out 90 Libertys.

Q. Do you think you sell most of those?

A. I sell—I figure my average on my magazines, profit, is about $1.50 a week to myself.

Q. You testified that the check you got was, I believe, $10.80? A. $10.80 a week, yes.

Q. And that is less Social Security tax?

A. Less Social Security tax.

Q. How much is the Social Security tax?

A. Well, it brings the check down to $10.52 or $10.54. [440] I will see right here. It is $10.80 less 11 and 11; $10.58.

Q. That shows the tax then just on the amount of that check; doesn't it? A. It does, yes.

Q. Now, you have just testified that the wholesaling activities for which you receive that check commence as to two boys at 12:00 o'clock——

A. (Interrupting) 12.30.

Q. 12:30, and as to one boy at 2:00 o'clock——

A. 2:30, and one boy at 4:00 o'clock.

Q. What does that consist of? Explain what your wholesaling activities consist of.

A. Supplying those boys with the papers as the editions come out and check them in the evening.

Q. The papers are dropped on the corner you occupy?

A. They are dropped on all four corners. I get papers on every corner of the four.

Q. And you walk over there to where the papers are dropped? A. That is right.

(Testimony of Arthur Steuart.)

Q. And if it is after 12:30 two of these boys come over and you count them out the papers?

A. That is right.

Q. And you do that as each edition comes out?

A. As each edition comes out.

Q. How long does it take you, approximately, per edition [441] to do that?

A. Oh, I would say two or three minutes.

Q. Two or three minutes? A. Yes.

Q. And you do that every day?

A. Every day.

Q. And the rest of the time you occupy vending your own newspapers and magazines?

A. On the corner.

Q. And when do you collect for those papers?

A. When do I collect from the boys?

Q. Yes.

A. I collect from them in the evening, at 7:00 o'clock. They quit at 7:00.

Q. And then you check in to the district man at or about the same time?

A. I check in to the district man at about 6:30. He comes around. He checks me in from the night before. I have the money on hand. He don't check me in the day before.

Q. You are extended credit, then, until the next day?

A. Until the next evening, yes. [442]

Q. (By Mr. Mouritsen) Mr. Steuart, will you explain whether or not this regulation of your or-

(Testimony of Arthur Steuart.)

der, then, of the editions, except the final edition, can be done as a daily practice? A. It cannot.

Q. Will you explain how that is handled?

A. The district man tells me that it makes too much trouble in his bookkeeping to check that over from day to day, rearrange that, So I let that go on a period of time and if I see the papers are going bad in that one edition I try to figure out where they are going bad so I can put them on to the edition where they will move.

Q. And if you have papers, surplus papers, or unsold papers from these earlier editions prior to the final edition are you permitted to turn those in and receive credit for them?

A. No, I am not. I am not able to do that. I am told by the district man when I have those earlier papers to try to push them off before I go to work on my later papers, unless someone asks for a later paper, which makes it very difficult because people want a later paper, because the idea is I am supposed to get rid of all my papers. I do not get returns for them.

Q. (By Mr. Compton) You have testified you sell approximately 150 Heralds a day?

A. That is right. [443]

Q. That gives you a profit of $3.00 a day, doesn't it?

A. 150 Heralds would give me a profit of $3.00 a day.

Q. You testified you sell approximately 80 News a day? A. That is right.

(Testimony of Arthur Steuart.)

Q. That would give you a profit of $1.00 on the News?

A. It would, yes, a cent and a quarter.

Q. That would be $4.00 a day profit on the sale of those two papers? A. On those two papers.

Q. Then you get a check of $10.58 from the Herald? A. That is right.

Q. What is the amount of the check you get from the News?

A. The check I get from the News is $2.94; $3.00 less the Social Security.

Q. And you state you make approximately—how much did you state you made, approximately, per week on magazines? A. About $1.50.

Q. Well, what is your profit on 60 Saturday Evening Posts?

A. My profit on 60 Saturday Evening Posts would be a cent and a half. That would be 90 cents.

Q. And the profit on the Libertys?

A. It would be the same, a cent and a half.

Q. That is $1.50—between $1.50 and $1.80, approximately?

A. As I told you, I don't sell all those myself. I put them on the other corners. [444]

Q. Now, you figure about $1.50?

A. I figure that is about my profit, yes.

Q. That would make you about $38 or $39 a week?

A. I figure between $35 and $40 a week. I have never figured it right down to a penny because it varies.

(Testimony of Arthur Steuart.)

Q. Do you wholesale magazines to these off-corner boys? A. I give them magazines, yes.

Q. Do you receive from anybody a check for that? A. No, I do not.

Q. You testified you received the magazines from Joe Woods.

A. Yes. That is the Liberty and Post. I get my Look and Colliers from the American News Company, or the Los Angeles News Company.

Q. You get only the Saturday Evening Post and Liberty from Joe Woods?

A. The Saturday Evening Post and Liberty.

Q. And these other magazines from some other supply?

A. From the American News Company, yes.

Q. Now, the check that you get from the News, the deduction for Social Security tax and so on is based just on the amount of that check, isn't it?

A. On the amount of that check, yes. [445]

Recross Examination

Q. (By Mr. Binford) You also, I believe, testified that you sold a certain number of Examiners and Times each morning. A. I do.

Q. What profit do you make on the sale of an Examiner? A. 2 cents.

Q. And on the Times? A. 2 cents.

Q. About how many of those do you sell each day?

A. I would average about 10 between the two of them.

(Testimony of Arthur Steuart.)

Q. About 10 between the two of them?

A. That is an average. Some days it would be more and some days it would be less.

Q. Do you get full returns on the News?

A. I do.

Q. You can regulate your order in any way you want?

A. The district man regulates the orders, but he gives me full returns. He don't tell me how many papers I should have. He knows about how many I should sell on the corner from day to day because he takes care of that district, and when he comes up I turn in the papers of the edition I have and he gives me papers of the coming edition, the number he figures I should have.

Q. Then if he has oversupplied you to some extent, he accepts [446] the returns?

A. He accepts the returns, yes.

Q. Do you sell all of the editions of the News?

A. Well, I don't know how many editions—no, we get the fifth and sixth, we don't get the 7th, and we get the 8th, 9th and 10th.

Q. And you don't get the 4th, the early morning edition?

A. No. That is another paper that is left on the corner there too.

Q. But you don't handle that?

A. I handle that along with the others. They leave that on the rack and I check in with the News district man. I overlooked that.

Q. Well, it is the same paper?

(Testimony of Arthur Steuart.)

A. It is the same paper, but it is handled by two different district men.

Q. Do you know the name of the district man that handles that early morning edition?

A. Gale Napping, or something to that effect.

Q. There is no special boy that has the corner for the early morning edition? You handle that through the rack?

A. There is a boy there, but he leaves before I get there. He leaves the papers with the Examiner and Times man, and when I come on the Examiner and Times man checks in with me for what he has sold at 2 cents apiece.

Q. So the way you handle the early morning edition of the [447] News is the same way you handle the Examiner and the Times?

A. That is right.

Q. And the early morning edition of the News is handled by the same boy the same as the Examiner and Times are handled, by the same boy, is that correct? A. That is right.

Q. When the papers are delivered to you by the News during the day, commencing from the 5th edition on, are they all left at one corner or are they left at the four corners?

A. They are left on the corner that the district man comes to.

Q. They are left there in your charge?

A. Yes.

Q. And you distribute them to the other corners? A. That is right.

(Testimony of Arthur Steuart.)

Q. And you also charge up the boys with what you deliver to them?

A. That is right. I check in with them in the evening the same as I do with the Heralds.

Q. And you keep a record, a written record, I guess, each day of those papers?

A. I keep a paper and mark down how many papers they have so I will know how many they have.

Q. And how much to collect from them every evening? A. Yes. [448]

Q. And charge the returns against them, is that correct? A. That is right.

Q. Do you make an accounting to the district man for the News, being the district man that handles the 5th edition on? A. That is right.

Q. And you make that accounting every day?

A. I make that accounting once a week.

Q. You make that accounting once a week?

A. Once a week, yes.

Q. And that covers the papers handled, the News handled by you during that current week?

A. That is right.

Redirect Examination

Q. (By Mr. Mouritsen) From time to time during the day do these other newsboys whom you supply, have they run out of papers on occasion and come to you for additional copies?

A. They do.

Mr. Binford: There was one question, Mr.

(Testimony of Arthur Steuart.)

Steuart, and that is, do you get full returns on magazines?

The Witness: Yes.

Mr. Binford: Do you have any contact at all with the district man who handles the early editions of the News?

The Witness: Well, I don't directly. I see him once maybe a week. [449].

Mr. Binford: But you have no real business with him?

The Witness: No, I have no business with him whatsoever—yes, I do. I check in to him for the papers. I keep track of how many papers I sell every day and he stops in once every week or every two weeks.

Mr. Binford: And you make an accounting to him also?

The Witness: Yes.

Mr. Binford: For the papers you have left over in the morning?

The Witness: Yes; and for the papers I sell.

Mr. Binford: That is all.

Q. (By Mr. Mouritsen) And these boys to whom you supply papers, you supply papers at the same price at which you receive them?

A. That is right.

Mr. Binford: Is that true as to magazines also?

The Witness: That is true.

DAVID KADESH,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined [450] and testified as follows:

Direct Examination

Trial Examiner Kennedy: Your full name, please?

The Witness: David Kadesh.

Q. (By Mr. Mouritsen) Where do you live, Mr. Kadesh?

A. Out in Huntington Park, 3000 East Florence.

Q. Do you at present handle the Los Angeles Evening Herald and Express? A. Yes, sir.

Q. And the News? A. Yes, sir.

Q. And where do you handle them?

A. At Manchester and Broadway.

Q. And do you receive a check from the Evening Herald and Express?

A. Yes, sir, I do.

Q. And from the News? A. Yes, sir.

Q. Who is your district manager for the Evening Herald and Express? A. Harry Plotkin.

Q. And who is your district manager for the News? A. Harry Maxwell.

Q. During what hours do you operate on the corner?

A. Why, I come there at 9:30 and stay until 8:00 o'clock. [451] I don't receive my papers until 10:00.

Q. Have you ever received any instructions

(Testimony of David Kadesh.)

from your Herald and Express district man regarding the hours you are to operate on the corner?

A. Well, sometimes when he wants us to work at the Coliseum, he tells us to be down there at eight or seven, when the American Legion is in town or the Shriners or any big doings.

Q. Did you ever have any conversation with your district manager for the Evening Herald and Express regarding the length of time that you are to remain on the corner?

A. Yes. There is several times——

Q. (By Mr. Mouritsen) Have you had more than one such conversation? And, during what period?

A. Well, several times I sold out of papers at 10 minutes to 8:00

Q. (By Mr. Mouritsen) When did the last such conversation you had occur? Can you fix the date approximately? [452]

A. No, I can't because it is sometime before Christmas.

Q. In what year? A. 1939.

Q. Now, where did this conversation occur?

A. It occurred at Broadway and Florence.

Q. And with whom did you have the conversation? A. With Harry Plotkin himself.

Q. Was there anyone else there at that time?

A. The other newsboy that sells Florence and Broadway.

Q. Who is he? A. Red Kahn.

(Testimony of David Kadesh.)

Q. Will you tell us what was said at that time by yourself and by Mr. Plotkin?

A. Well, I quit—I sold out of papers and I couldn't get any more at Figueroa and Manchester, and so I didn't have any. So I took the five minutes to 8 street car and rode down to Florence and Broadway, and about two minutes to 8:00 Harry Plotkin came by there and he says, "What are you doing over here so early?" So I explained to him that I sold out of papers and there was no use standing there on the corner until 8:00 o'clock if I didn't have any papers to sell, so he got angry and he started to give me the devil for it.

Mr. Compton: What did he say, Mr. Kadesh?

The Witness: Well, he said, "You know better than to quit before 8:00." [453]

Q. (By Mr. Mouritsen): Were you operating on this corner during November, 1937?

A. Yes, sir.

Q. After 1937 did you handle both the Evening Herald & Express and the News?

A. Yes, sir, I did.

Q. Prior to that time had you handled the News or the Evening Herald & Express alone? [454]

A. Yes, I did. I handled the Herald alone.

Q. (By Mr. Mouritsen): Did you have a conference with anyone connected with the Evening Herald & Express at or about that time regarding the handling of both papers?

(Testimony of David Kadesh.)

A. Yes, at the Herald office.

Q. And who was the man in charge of that particular office, or whose office was it?

A. Well, Mr. Jake Gratz.

Q. Now, was Mr. Gratz present? A. Yes.

Q. Who else was present?

A. I don't remember if Bill Abels might have been there; I don't remember for sure.

Q. Were there any other newsboys present?

[455]

A. Yes. They were practically all of them from the southwest of town.

Q. Now, did Mr. Gratz say anything at that time with respect to this handling of both papers?

A. Well, he tried to show us, and wanted to demonstrate to us how we should carry the News on the bottom and the Herald on the outside.

Q. And what did you do—did he ask you to do anything on that occasion?

A. Well, I showed him how I carry it, and they thought it was all right. I carry the News on the bottom and the Herald on the outside.

Q. When you demonstrated that manner in which you carried them did he say anything to the other newsboys at that time?

A. Well, I think he said that was something, that is the way that would be proper to handle them.

Q. (By Mr. Mouritsen): Now, in your operations on the corner do you supply papers to other newsboys? A. Yes, sir, I do.

(Testimony of David Kadesh.)

Q. And approximately how many such boys?

A. I have about five.

Q. And are any of those spots that you supply what are [456] known as traffic spots?

A. Yes, sir.

Q. Will you tell us what a traffic spot it?

A. Well, the boy stays in the middle of the street there on the white line, holds both papers, the Herald and the Evening News.

Q. Has Plotkin ever had any conversation with respect to these boys who sell on the traffic spots?

Q. (By Mr. Mouritsen): Just answer that yes or no. Has he had such a conversation?

A. Yes.

Q. Has there been more than one such conversation? A. Yes.

Q. Approximately how many?

A. Well, I couldn't say offhand. Couldn't say.

Q. During what period of time has that occurred? Have you had any such conversations during the last two or three [457] years?

A. Yes.

Q. (By Mr. Mouritsen): Do you recall, Mr. Kadesh, when you had the last such conversation with Mr. Plotkin?

A. Well, I can't recall at the moment, because it has been so long ago. It has been this year, though. I had several arguments with him this year, although I don't remember the exact time.

Q. Is that as definite as you can fix this last

(Testimony of David Kadesh.)

conversation that you had with him respecting these traffic spot boys?

A. Well, like last Saturday, I can recall when he drove by and he didn't see the Herald boy out selling papers, and he looked for the Examiner and Times boy, and he says to me, "Is the Herald boy handling the Examiner and Times?" And I said, "No. The other boy." And he looked down the street and saw the other boy, and he drove off.

[458]

Q. (By Mr. Mouritsen): Now, Mr. Kadesh, can you recall a specific conversation that you have had with Mr. Plotkin regarding these traffic spot boys?

Q. And can you give us the approximate date?

A. No, I am afraid I can't.

Q. Now, about how long ago did it occur?

A. Well, I couldn't tell you exactly because I don't remember. I didn't write it down or keep track of it at all. [459]

Q. Where did the conversation occur?

A. Well, it occurred at Manchester and Broadway lots of times.

Q. (By Mr. Mouritsen): On all of these occasions were you and Mr. Plotkin present?

A. Yes.

Trial Examiner Kennedy: Well, you have got to have some- [460] thing more definite about time. We do not expect you to remember every day, or every day of the month, or anything of that kind, but do you know what month this particular conver-

(Testimony of David Kadesh.)

sation took place? That is, the one you want to testify about.

The Witness: Well, I have had so many runs in with them that I don't remember all——

Trial Examiner Kennedy (Interrupting): When did the runs in first start?

The Witness: Well, it started, oh, lots of times the——

Trial Examiner Kennedy: I say, when was the first one?

The Witness: Oh, well, I don't remember. I have worked for him so long that——

Trial Examiner Kennedy (Interrupting): How long have you worked for him?

The Witness: Oh, about 10 or 11 years.

Trial Examiner Kennedy: And did they start the minute you started to work for him 10 or 11 years ago?

The Witness: No.

Trial Examiner Kennedy (Interrupting): All right. I asked you just a very simple question. You answered "no." Now, did they start within a year after you first worked for him?

The Witness: Well, no, not exactly.

Trial Examiner Kennedy: Not exactly. You got along with him for the first year; is that it?

[461]

The Witness: Yes.

Trial Examiner Kennedy: How about the second year?

The Witness: Yes.

(Testimony of David Kadesh.)

Trial Examiner Kennedy: You did. It started that second year?

The Witness: Yes.

Trial Examiner Kennedy: You have been there 10 or 11 years?

The Witness: Yes.

Trial Examiner Kennedy: That would go back about 1929 or 1930?

The Witness: Yes.

Trial Examiner Kennedy: I think, counsel, you are going to have to tie this down a little more definitely than that. Certainly if you cannot bracket it within a six months' period I do not see how we are going to take any cross examination or rebuttal testimony on incident.

Q. (By Mr. Mouritsen): Mr. Kadesh, how long have you had boys on these traffic spots to whom you supply papers?

A. Well, I have always had them ever since I got it. At different times I have different boys.

[462]

Q. Well, during the year 1939, Mr. Kadesh, do you recall any conversations you had with Mr. Plotkin regarding the operations of these traffic spot boys?

The Witness: Yes.

Q. (By Mr. Mouritsen): Now can you fix any such conversations with Mr. Plotkin more definitely within the year 1939?

A. Well, it seemed to be mostly the last half

(Testimony of David Kadesh.)

Q. And where did you have such a conversation?

A. Well, it is always at the corner of Broadway and Manchester.

Q. At the time when you had such a conversation was anyone present other than yourself and Mr. Plotkin? [463]

A. Well, there was a few customers there, and I don't remember who they were.

Q. Well, they didn't take part in the conversation? A. No, they didn't.

Q. Would they just come up and get a paper while you were talking to Plotkin; is that it?

A. Yes.

Q. Now, will you tell us what Mr. Plotkin told you and what you said to Mr. Plotkin during this conversation in the latter part of 1939? [464]

The Witness: Well, he used the—cussed me out a couple of times.

Trial Examiner Kennedy: How did he cuss you out? What did he say? [465]

The Witness: Well, he—"Darn you" or "Damn you" or other words that he could have used.

Trial Examiner Kennedy: All right, go on; what else did he say?

The Witness: And a lot of other things that I don't remember.

Trial Examiner Kennedy: You remember that he said, "Darn you" or "Damn you"?

The Witness: Yes.

(Testimony of David Kadesh.)

Trial Examiner Kennedy: But you don't remember what else he said?

The Witness: Yes, sir. And he told me the next time it happened that I got a couple of days lay-off.

Trial Examiner Kennedy: What did you say?

The Witness: Well, what could I say?

Trial Examiner Kennedy: Well, I don't know.

The Witness: He was the boss and he could do whatever he wanted to.

Trial Examiner Kennedy: Did you say anything?

The Witness: No, I didn't, because there was no use arguing with anybody that—didn't argue with anybody that was angry. I waited until he cooled off.

Trial Examiner Kennedy: Then what?

The Witness: And then I would talk it out with him.

Trial Examiner Kennedy: Did you talk it out with him. [466]

The Witness: Yes.

Trial Examiner Kennedy: When he cooled off?

The Witness: Yes.

Trial Examiner Kennedy: Did he cool off at that same time?

The Witness: No, he didn't. It would take maybe four or five hours.

Trial Examiner Kennedy: Was he standing there all the time, or did he come back?

The Witness: Well, he kept coming back.

(Testimony of David Kadesh.)

Trial Examiner Kennedy: What do you mean by "he kept coming back"? More than once, or what?

The Witness: Well, he would bring me the papers out at one o'clock, and he would bring me papers at 3:30, and then he brought me some more papers at 4:00 o'clock.

Trial Examiner Kennedy: On each of these occasions he came back did he say anything to you?

The Witness: No; just that argument we had, and he——

Trial Examiner Kennedy: Wait a minute. You say, "No," and then "just that argument we had."

The Witness: Well, that argument we first had, and then he wouldn't say no more until I would give him the money for the papers that evening.

Trial Examiner Kennedy: Then did he say something?

The Witness: Well, when I asked him what he was mad [467] about and what was the argument and what he had against me.

Trial Examiner Kennedy: What did he say to that?

The Witness: Well, if I was right he agreed, and if I was wrong I agreed.

Trial Examiner Kennedy: Those are the words he used?

The Witness: Yes. Those are the——

Trial Examiner Kennedy: All right, go ahead with the examination. [468]

(Testimony of David Kadesh.)

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 o'clock p. m.)

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Kadesh, are you a member of the Newsboys Union?

A. Yes, I am.

Recross Examination

Q. (By Mr. Compton) Mr. Kadesh, when did you state that you started to sell newspapers?

A. When did I start?

Q. Yes.

A. About 10 or 11 years ago for Harry Plotkin.

Q. That would put it at 1929 or 1930?

A. Yes, sir.

Q. Isn't it a fact that you didn't start to sell newspapers [472] until approximately June, 1932?

A. Well, I did sell at other corners before I went to Manchester and Broadway.

Q. Did you testify that all the time you were selling papers Mr. Plotkin was the branch manager in charge?

The Witness: No. I have not been working for Harry Plotkin all of the time.

Q. (By Mr. Compton) Do you know when you started to sell newspapers in the district of Harry Plotkin?

A. Well, there was another man working before

(Testimony of David Kadesh.)

Harry Plotkin started there and his name was Mr. Wilder.

Q. Do you remember about what time that was that Mr. Plotkin started?

A. No, I don't.

Q. You are known as a wholesaler, aren't you?

A. Yes, I have boys working for me on the corner.

Q. And do you receive a check from the Evening Herald for your services as a wholesaler?

A. Yes.

Q. What is the amount of that check?

A. $9.00 and 18 cents for security, Social Security.

Q. And that 18 cents is based upon the amount of the check you receive? [473]

The Witness: Well, yes, for Social Security, 18 cents off of that.

Q. (By Mr. Compton) Do you also receive a check from the News? A. Yes.

Q. What is the amount of that check?

A. $3.42 and there is eight cents also for Social Security on that.

Q. And the Social Security is based on the amount of the check you receive?

A. No, I get $3.42.

Q. You get $3.42?

A. Yes, and there is eight——

Q. (Interrupting) How much tax?

A. Eight cents.

Q. Eight cents Social Security tax?

(Testimony of David Kadesh.)

A. Yes.

Q. Do you sell the Saturday Evening Post?

A. Yes, I sell the Saturday Evening Post and Liberty.

Q. Do you sell Look? A. No.

Q. Do you sell Colliers? [474]

A. No, no other magazines.

Q. Do you sell any other newspapers, like the People's World?

A. Well, he has a rack there and he puts it there, and there is a place for the money for it, and there is men come along there and drop the money in, but I don't sell them.

Q. You don't sell them? A. No.

Q. Mr. Kadesh, you testified, I believe, that you sold newspapers at the Coliseum at special events there? A. Yes.

Q. Do you recall how many times, approximately, during the time that you have been selling newspapers, that you have sold newspapers at the Coliseum?

A. Well, last year I think it was about twice when the—when the American Legion and the Shrines was over, and it usually took place in the morning before I would have to go to work on the corner.

Q. And what time in the morning?

A. Well, there was one time I had to be there at 7:00.

Q. You say you had to be there; wasn't it a privilege that was extended to you to make some extra money? A. No, it was not.

(Testimony of David Kadesh.)

Q. Do you want us to believe that the District Manager ordered you to report there at that time? [475]

A. Yes, sir, I do.

Q. What compensation did you get for that appearance? A. I didn't get any.

Q. You mean you sold papers, and did not receive the purchase price for them?

A. Well, I would stay there for about three hours, and sell maybe two papers, or three, and it cost me 7 cents car fare to go there, and then it cost me 7 cents carfare to go back to my regular corner to sell, and all I made was 4 or 6 cents.

Q. Did that happen on each occasion you went to the Coliseum?

A. Approximately, yes, on each occasion.

Q. You made not more than 4 to 6 cents?

A. 4 to 6 cents, yes.

Recross Examination

Q. (By Mr. Binford) Mr. Kadesh, do you also sell at all the Times or the Examiner?

A. Yes. On Saturday night.

Q. The Times and Examiner on Saturday night?

A. Yes.

Q. What time do you start selling them?

A. I start after 8:00 o'clock.

Q. Both papers? A. Yes, sir.

Q. How long do you continue that? [476].

A. Well, I have to go eat at eight o'clock, and I come back at 8:30, and I stay there until 2:00.

(Testimony of David Kadesh.)

Q. Until about 2:00? A. Yes.

Q. You stated that Mr. Harry Maxwell was the district man for the News? A. Yes, sir.

Q. And you receive the edition of the News that you sell from Mr. Maxwell? A. Yes, I do.

Q. Does he leave them on one corner for you, or on all four corners?

A. He leaves them on one corner and then I call the boys in to get them, and then there is Times racks that I put them in—papers in the racks.

Q. Then you charge the boys up with those papers, and collect from them for it?

A. Yes, I do.

Q. How often do you make accounting with the boys?

A. Well, I make account with them every night. They pay for them every night, and I pay for them every night.

Q. And you pay to Mr. Maxwell, or his representative? A. Yes, Mr. Maxwell himself.

Q. Do you sell the 4th, early morning edition of the News? A. No, I do not. No. [477]

Q. Do you know whether that edition is sold on that corner or not? I mean by that corner, the corner that you work on.

A. Yes. There is a man sells there.

Q. The News is sold there in the morning?

A. Yes.

Q. Did I understand you to say that you put the Daily News, copies of the Daily News, in the Times rack? A. Yes, sir.

(Testimony of David Kadesh.)

Q. You mean that is just as a place for them to be in safe keeping until the boys pick them up?

A. No; that is a place where there is a bus stop, and the people sometimes wait for the buses, and they buy one out of those racks.

Q. We are getting the benefit—the News is—of the Times Rack occasionally? A. Yes, sir.

Q. These papers that you place on the various racks, are they eventually picked up by your boys?

A. They come to work—I have one boy that comes at 12:00 and I have other boys that come at 3:30, and others at a quarter after 3:00, right after school.

Q. Do those boys pick up the papers that you have left on the corner for you, or do they come and get theirs?

A. They come to me to get them and I give them to them.

Q. You check them off? [478] A. Yes.

Q. How many boys do you have that you so handle? A. I have five of them.

Q. That is, one for the three corners, the three off-corners? A. Yes.

Q. And what territory do the other two boys cover?

A. Well, there is one boy that has a route and then there is a boy that sells in the middle of the block, there is a Kress store and a Sontag store, and there is a market there, and he walks up and down that block and sells papers to people that come shopping there.

(Testimony of David Kadesh.)

Q. You don't make any profit on the papers those boys sell? A. No.

Q. You don't pay them any fixed salary or compensation of any kind? A. No, I don't.

Q. But you are paid by the Stockholders Publishing Company, that is the News, you are paid by the News the sum of $3.42 each week; is that correct?

A. Yes.

Q. And the 8 cents is Social Security tax on $3.50? A. Yes, sir. [479]

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Kadesh, on that corner has the district manager for the Evening Herald and Express furnished you with a box?

A. Yes, they have.

Q. And from time to time in the past couple of years has he furnished you advertising placards of the Herald and Express? A. Yes, he has.

Q. And are those cards that he furnishes you similar to Board's Exhibit 7? A. Yes.

Q. Has he given you any instructions with reference to the use of those cards?

A. Yes. He told me to put them in whenever I get them.

Q. Put them in what?

A. You know, in the place in the box. There is holes for those cards.

Q. And on that corner are there any News racks?

A. Not on that particular corner there isn't, but down in the middle of the block there is.

(Testimony of David Kadesh.)

Q. Has your News district manager given you any instructions with reference to the use of that rack, the News rack down in the middle of the block?

A. Yes, he has. [480]

Q. And which district manager on the News?

A. Harry Maxwell on the Evening News.

Mr. Mouritsen: By the way, Mr. Binford, since there is quite, or has been quite a number of reference to the Daily News and the Evening News and the News itself, can I ask you to make a statement for the record with reference to the use of those names? As I understand it, sometime ago it was changed from the Evening News or the Daily News to the fact that it is the News now in all editions, both morning and evening, and it is a 24-hour newspaper.

Mr. Binford: The paper, the News, is now known as the News and it is called a 24-hour newspaper, the first edition coming out early in the morning—I don't know the exact hour—and continuing through to, I believe it is the ninth or tenth edition, which is known as the Ten Star Edition. There is no distinction in the paper from morning through to the last edition except with respect to news or possibly other added features from other editions. There is only one paper that is known as the News. Sometime prior to the present there was a paper published known as the Evening News and the Morning or Daily News.

Mr. Mouritsen: And that paper was published by the Stockholders Publishing Company?

Mr. Binford: By the same Stockholder Publishing Company. [481]

(Testimony of David Kadesh.)

Q. (By Mr. Mouritsen) And from time to time have the district managers of the Herald and Express furnished you a change apron?

A. Well, yes, they have.

Q. And can you just describe briefly what a change apron is such as furnished you by the Evening Herald and Express?

A. Well, it has three pockets. It has "Herald and Express" on it and it has three pockets to keep change in, like one for pennies and nickels and dimes and quarters, silver.

Q. And you say it has "Herald and Express" on it? A. Yes.

Q. And from time to time has the News district manager furnished you a change apron?

A. No, he hasn't.

Recross Examination

Q. (By Mr. Compton) Mr. Kadesh, this box that you testified concerning is an ordinary wooden box?

A. Yes—no, it is a box and it is painted green and it has "Herald and Express" on it, "Five cents."

Q. It is a wooden box?

A. Yes, a wooden box.

Q. And it is for the purpose of placing your papers on? A. Yes.

Q. And that was given to you without charge or cost of any kind? [482] A. Yes.

(Testimony of David Kadesh.)

Q. And these placards concerning which you testified *on* charge or cost is made for them, is there?

A. No.

Q. Do you believe that those placards assist in selling the Evening Herald and News?

A. Well, it doesn't—the cards itself, I don't think it does because it has advertisement on it.

Q. Don't you think it assists in selling certain editions of the paper, like the Sports edition for football news and things of that sort?

A. Well, it doesn't advertise the paper all the time.

Q. I say, when it does——

A. (Interrupting) Yes, when it does.

Q. Do you think it assists you? A. Yes.

Q. And, consequently, you sell more papers?

A. Yes.

Q. And you make more money?

A. Yes, that is right.

Q. Now, this change apron, those are furnished you whenever you want them, aren't they?

A. No, not whenever we want them.

Q. Well, if you ask for one would you get one?

A. Well, sometimes we do and sometimes we don't. [483]

Q. And they are purely a convenience for you, aren't they?

A. Well, I don't necessarily use one, but the boys that work for me use them.

Q. You don't use a change apron? A. No.

(Testimony of David Kadesh.)

Q. And the change aprons cost you or the boys who use them nothing? A. Nothing.

Recross Examination

Q. (By Mr. Binford) Mr. Kadesh, with respect to racks, I believe you testified there was none on the corner but there was one in the middle of the block; is that correct? A. Yes.

Q. What is that rack?

A. It is a News rack.

Q. To put newspapers in? A. Yes.

Q. For display purposes? A. Yes.

Q. Does it cost you anything? A. No.

Q. When you saw it and it was delivered to you did you know what it was for?

A. Yes, I did. [484]

Q. You didn't need any instructions what it was for, did you?

A. Well, I have sold papers too long not to know.

Q. Well, even if you hadn't sold papers too long not to know you would know what a news rack was for, wouldn't you? A. Yes.

Q. And you did not have to have any instructions to know how to use it, did you? A. No.

Q. Nobody had to come and fold a paper and put it in for you, or show you how to use it, did they?

A. No, they did not.

Redirect Examination

Q. (By Mr. Mouritsen) Is the box furnished by the Evening Herald and Express your box? Could you take it with you when you left?

(Testimony of David Kadesh.)

A. No, I leave it there on the corner all the time.

Q. How about the rack furnished by the News? Could you take that rack with you if you left?

A. No, I could not; it did not belong to me.

Mr. Cosgrove: Will it be stipulated, Mr. Mouritsen, that the testimony of this witness, David Kadesh, is not intended [485] to apply to the Los Angeles Times case?

Mr. Mouritsen: That is correct.

Mr. Cosgrove: Thank you.

Mr. Hall: Or the Los Angeles Examiner case?

Mr. Mouritsen: That is right.

Mr. Binford: We desire to make the same motion at this time made heretofore with respect to the testimony of Mr. Arthur Steuart, in this respect: That in so far as any testimony offered by the witness going to the alleged instructions, or with respect to conversations had with, instructions given by Mr. Harry Plotkin, or conversations had with Harry Plotkin, who was the district manager for the Herald and Express, that said testimony be stricken as to the Stockholders Publishing Company, and we tended the same stipulation with respect to the reinstatement thereof as was tendered by us in connection with the testimony of Mr. Arthur Steuart.

Trial Examiner Kennedy: What do you have to say about that, Mr. Mouritsen?

Mr. Mouritsen: I would be willing to stipulate

(Testimony of David Kadesh.)

upon the same conditions as with reference to Mr. Arthur Steuart's testimony.

Trial Examiner Kennedy: The motion to strike is granted. The stipulation is accepted, let the record show.

Mr. Hamblin: If the Court please, we would like to [486] move on behalf of the Los Angeles Evening Herald and Express Department that any conversations between this last witness and the District Manager, or any other employee of the News, be stricken in so far as it may be deemed binding upon our company, subject to a motion to reinstate as made by Mr. Binford.

Mr. Mouritsen: That will be acceptable to the Board.

Trial Examiner Kennedy: Will that be agreeable?

Mr. Mouritsen: Yes.

Trial Examiner Kennedy: The motion to strike is granted, with that understanding.

GENE LeROY ALLEY

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and further testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Alley, have you ever sold the Evening Herald and Express?

A. Yes.

(Testimony of Gene LeRoy Alley.)

Q. Commencing at what time? When did you start to sell papers for the Evening Herald and Express? A. Well, it was sometime in 1937?

Q. Have you ever sold on the corner of 11th and Alvarado? A. I have.

Q. And at what time did you start to sell on that corner?

A. The middle of November, 1938. [487]

Q. And from whom did you obtain the corner? Who put you on it?

A. From the district man, Jimmy Blake.

Q. District man for what paper?

A. For the Los Angeles Evening Herald and Express.

Q. After Mr. Blake put you on the corner did you ever have any conversation with him relative to your selling out in the traffic lane? A. Yes.

Q. About when did you have that conversation?

A. Well, about a week after I started selling papers.

Q. And where did the conversation take place—strike that. Do you mean a week after you started selling on the corner of 11th and Alvarado?

A. That is right.

Q. Where did the conversation take place?

A. On the same corner.

Q. And who were present?

A. Just Jimmy Blake and I.

Q. Will you state what Mr. Blake said to you and what you said to Mr. Blake?

(Testimony of Gene LeRoy Alley.)

A. Well, about three o'clock in the afternoon Jimmy Blake came up to the corner, and I had several Heralds of the earlier editions, and Jimmy Blake then said, "You can sell more papers if you stand out in the traffic zone and catch these automobiles." Therefore I did. [488]

Q. After you started to sell at that spot, did you ever have any conversation with Blake regarding the —strike that. After you started selling on that corner, did you also handle the News?

A. The Evening News, yes.

Q. After you started selling there, did you ever have a conversation with Blake regarding your handling the News? A. Yes.

Q. And about when did that conversation take place?

A. About two weeks after I started selling on that corner.

Q. Where did the conversation take place?

A. On the corner.

Q. Who were present?

A. Just Jimmy Blake and I.

Q. Will you state what Mr. Blake said to you and what you said to Mr. Blake?

A. Well, Mr. Blake said to me not to handle the Evening News, to leave them on the ground, and to bury them.

Q. Was there anything further said at that time?

A. No.

Q. After that time did you put the Evening News on the ground? A. Yes, sir.

(Testimony of Gene LeRoy Alley.)

Q. What did you understand by his use of the term "burying" the News? [489]

A. Well, if you fold the News—I understood if you—I understand if you fold the News, it is smaller than the Herald, and if you put a Herald over it therefore it cannot be seen.

Q. Now, after you had done that, did you have a conversation with the News District man regarding the handling of the News? A. Yes.

Q. And about when did that conversation take place?

A. That took place either the same day that I laid the News down, or the preceding day.

Q. Do you mean by that the day before or the day following? A. The following day.

Q. Where did that conversation take place?

A. On the same corner.

Q. Who was the district man for the News?

A. I believe it was Andy—I believe his full name is Andy Barrigan.

Q. Who were present at this conversation?

A. Andy Barrigan and myself.

Q. What did you say to Andy and what did Andy say to you?

A. I said to Andy, "Blake threatened to fire me if I didn't sell the—if I—if I handled the Evening News." And Andy said for me to go ahead and handle them, and that he would take it up with Mr. Smith.

Q. Is that about all the conversation that you had at that [490] time?

(Testimony of Gene LeRoy Alley.)

A. He told me to go ahead and handle them.

Q. Was that about all the conversation?

A. Yes.

Q. Did you have a later conversation with Mr. Barrigan? A. Yes.

Q. About when did that conversation occur?

A. That conversation occurred in the morning a day later.

Q. Where did this conversation take place?

A. That was across the street on the same corner.

Q. Who were present at this time?

A. There was Andy Barrigan driving a car, and the fellow he introduced to me as Mr. Smith, and another fellow who was not introduced.

Q. Did this Mr. Smith with Andy Barrigan—did he come to the corner with him?

A. In the car, yes.

Q. State at this time what was said and what was done.

A. Well, Andy Barrigan asked me to explain what was the set-up, so I explained to Mr. Smith that I had been instructed not to handle the Evening News as it was then. Mr. Smith said at that time for me to handle the Evening News, and that they would contact the Herald and get the matter straightened up, and that if I was fired for handling the News, that he would see to it that I would get another job. [491]

Q. And was there any further conversation at that time? A. No.

(Testimony of Gene LeRoy Alley.)

Q. After that time did you handle both of the papers? A. I did.

Q. Now, were you removed from that corner by Mr. Blake? A. I was.

Q. And when did that occur?

A. That was the first or second week in December, the same year.

Q. That was 1938? A. That is right.

Q. And prior to the time when you were removed from the corner by Mr. Blake did you have a conversation with him regarding your removal?

A. I did.

Q. During the time while you were on 11th and Alvarado did you receive a check from the Evening Herald and Express? A. No, sir.

Q. Did you receive a check from the News?

A. No, sir.

Q. Did you receive papers to be distributed to other boys on the corner? A. Yes, sir.

Q. Will you tell us what you did with respect to these other boys? [492]

A. Well, the other boys came down sometime around 3:00 o'clock in the afternoon. There was one boy who covered the corner of Olympic and one boy who covered Pico and one boy who sold catercornered to my corner; three of them in all. They came to work at approximately 3:00 in the afternoon and took papers from all the editions from me, and checked in to me.

Q. Was that true of both the copies of the Evening Herald and Express and the News?

(Testimony of Gene LeRoy Alley.)

A. Except in the one newsboy—that is wrong. They all were, yes.

Q. And did you in turn check into the district manager? A. Yes, I did.

Q. And did you from time to time while you were selling receive advertising placards of the Evening Herald and Express? A. I did.

Q. And from the News? A. Yes.

Cross Examination

Q. (By Mr. Compton) Mr. Alley, you sold the newspapers, you say, at the corner of 11th and Alvarado Streets? A. That is right.

Q. Did you sell magazines there also? [493]

A. Yes, sir.

Q. Did you sell the Saturday Evening Post?

A. Yes, sir.

Q. Liberty? A. Yes, sir.

Q. Look? A. Yes, sir.

Q. Life? A. No.

Q. Click, or any of the picture magazines?

A. No, sir.

Q. Collier's? A. Yes.

Q. Did I understand you to say that all of the editions of the Evening Herald and Express were delivered to you at the corner of 11th and Alvarado?

A. No, sir.

Q. Were some of the editions delivered elsewhere? A. Yes, sir.

Q. Where were they delivered?

(Testimony of Gene LeRoy Alley.)

A. One delivery was made on the corner of—one edition delivery was made on the corner of Pico.

Q. Pico and what? A. Pico and Alvarado.

Q. Wasn't there an edition delivered also at the corner of 12th and Alvarado? [494]

A. No. That is probably the street I am thinking of, 12th rather than Pico.

Q. 12th and Alvarado? A. Yes.

Q. Was there a newsboy on that corner?

A. Yes, sir.

Q. Did that newsboy bring your copies of that edition from 12th and Alvarado to your corner at 11th and Alvarado, or did you go up there and get them? A. The boy brought them.

Q. Now, wasn't that a customary courtesy extended from one news dealer to another? [495]

The Witness: No.

Q. (By Mr. Compton) As a matter of fact, this Night Final edition, copies that you ordered were brought to you on that corner, on the corner of 11th and Alvarado, by the boy who normally sold papers at the corner of 12th and Alvarado?

A. Yes, sir.

Q. Did you ever take any papers delivered to your corner to the boy up there?

A. No, sir.

Q. Did he come to your corner to get his papers?

A. Yes, sir.

Q. And if the boy did not happen to be on the corner of 12th and Alvarado would you go get your own papers? A. Yes, sir.

(Testimony of Gene LeRoy Alley.)

Q. Mr. Alley, you testified, I believe, that James Blake removed you from that corner?

A. That is right.

Q. Mr. Alley, didn't you make that removal—didn't you cause a complaint to be filed with the National Labor Relations Board on the ground that you were removed from that [496] corner for union activity? A. Yes, sir.

Q. And wasn't that complaint thereafter dismissed by consent of the union and by your consent?

The Witness: No, it wasn't dismissed.

Q. (By Mr. Compton) What happened to it?

A. A settlement was made outside of court.

Q. What was the settlement?

A. The settlement was to be that I was to receive a corner outside of Mr. Norton's district which sold approximately 150 copies of the Evening Herald and Express daily.

Q. Did you ever receive such a corner?

A. No, sir.

Q. You never have received such a corner?

A. No, sir.

Q. You don't know for a fact, though, that the action was dismissed? [497] A. No, sir.

Cross Examination

Q. (By Mr. Binford) Mr. Alley, did you sell all editions of the News? A. No, sir.

Q. What was the first edition that you sold?

A. At that time I believe the first edition was called the Two Star, that I sold.

(Testimony of Gene LeRoy Alley.)

Q. That was then known as the Evening News, wasn't it? A. Yes.

Q. Now, when did you first start selling both the Evening News, as it was then called, and the Herald and Express? A. Sometime in 1937.

Q. Had you, from the time in November, 1937, that you started selling both papers, been continuing to sell both papers up until the time that this controversy arose? [498] A. No, sir.

Q. Well, what had you been doing in the meantime?

A. Well, when I started in 1937 on the Herald and Express and Evening News, I worked approximately three months and was then dismissed, and I worked on the different night papers. Then later received a second corner on the Herald and News.

Q. Where was that corner?

A. That was on the corner of Third and Broadway.

Q. And did you sell both papers there?

A. Yes, sir.

Q. Right along? How long did you stay at that corner?

A. I stayed there about five months—six months.

Q. Were you selling both papers all the time?

A. Yes, sir.

Q. And then what happened?

A. And then I was discharged again.

Q. What was that; second or third discharge?

(Testimony of Gene LeRoy Alley.)

A. That was the second. And then the third came November——

Q. (Interrupting) Let us finish with the second.

A. The second.

Q. And you quit selling again and then what did you do?

A. Then I went to the Herald and got this third job?

Q. Which was where?

A. Which was on the corner of 11th and Alvarado.

Q. And at the other two corners where you sold papers, you [499] sold both of the papers all of the time? A. Yes, sir.

Q. And it was when you commenced on this third, joint selling both of the papers that a controversy arose with respect to your selling the Daily News at all, which was then the Evening News, is that right?

The Witness: Yes, sir.

Q. (By Mr. Binford) Who was the district man for the News, or the Evening News, as it was then called, at the time you were located at 11th and Alvarado?

A. A fellow by the name of Andy Barrigan.

Q. Do you know whether the Mr. Smith that you referred to was Robert L. Smith, the general manager? A. I do not know.

Q. You do not know as to who that was?

A. No, sir.

(Testimony of Gene LeRoy Alley.)

Q. About how many copies of the Evening News did you sell in those days per day?

A. Approximately 87.

Q. Approximately 87, A. Make it 90.

Q. Did you have any contacts or anything to do with the [500] district man who sold the morning or Daily News? A. No, sir.

Q. Did you also use to sell, at the time you worked at Alvarado, copies of the Times?

A. No, sir.

Q. None at all? A. No, sir.

Q. You did not handle the Times or the Examiner? A. No, sir.

Q. Not even any so-called left-overs?

A. Not at all, no, sir.

Q. What is your occupation now, Mr. Alley?

A. I am secretary of the Newsboys Union.

Q. Have you any other occupation?

A. No, sir.

Q. That is a full-time job?

A. It is the only job I have.

Q. Are you selling papers for any papers?

A. No, sir.

Q. How long since you have been selling papers?

A. Six, or—six months.

Q. Now, do I understand you said you did not understand this charge filed with the National Labor Relations Board, you did not understand that has been dismissed?

A. Not dismissed, no. [501]

(Testimony of Gene LeRoy Alley.)

Q. What was your conception of what happened to it?

A. My conception was that it had been—that it had been filed until such times as I received a job and the Herald lived up to the promise they had made, and at that time there would be a dismissal of the case.

Q. You mean by "filed," you mean held in abeyance, as it were, until——

A. (Interrupting) Yes.

Q. You did not understand it was dismissed?

A. No, sir.

Q. How long ago was it that you claim to have had such an understanding or agreement?

A. Approximately March, 1939.

Q. A little over a year ago? A. Yes, sir.

Q. Have you taken any steps to procure reinstatement of the charge? A. Yes, sir.

Q. Has the charge been reinstated?

A. No— I am confused on the word—you mean the case, opening the case again?

Q. Yes. A. No, sir.

Q. Have you taken steps to have it reinstated?

A. No, sir. [502]

Q. You have not taken any steps in connection with that? A. No, sir. [503]

Mr. Cosgrove: Will it be stipulated, Mr. Mouritsen, that the testimony given by the witness Gene Alley this afternoon only, since he has been recalled

(Testimony of Gene LeRoy Alley.)

to the stand, is not intended to apply to the Times case?

Mr. Mouritsen: That will be so stipulated.

Mr. Hall: Will the same stipulation be made with reference to the Los Angeles Examiner?

Mr. Mouritsen: That will be so stipulated.

Mr. Binford: May it be deemed that I have made the same motion on behalf of the Stockholders Publishing Company respecting the testimony of Mr. Alley regarding his conversations with Jimmy Blake, the district manager of the Herald and Express, or conversations with the witness Jimmy Blake, as was made by me with respect to the testimony of David Kadesh, and with respect to the testimony of Arthur Steuart, all subject to our tendering the same stipulation?

Mr. Mouritsen: That is acceptable, Mr. Examiner.

Mr. Hamblin: Mr. Examiner, I would like to move also on behalf of the Los Angeles Evening Herald and Express Department to strike all testimony concerning conversations between the witness and Andy Barrigan, District Manager of [504] the Los Angeles News, and Mr. Smith, subject to the same motion.

Mr. Binford: May we request that you change that from Los Angeles News to just News?

Mr. Hamblin: Yes.

Trial Examiner Kennedy: Same ruling.

PHILIP SPAMPINATO

called as a witness by and on behalf of the National Labor Relations Board having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Do you sell the Los Angeles Evening Herald and Express?

A. Yes, sir.

Q. And the News? A. Yes, sir.

Q. And where do you sell them?

A. Seventh and Alvarado.

Q. How long have you sold there?

A. About six years. [505]

Q. (By Mr. Mouritsen) Where do you live, Philip?

A. I live at the Westlake Hotel. That is on Westlake. I believe the address is 720 Westlake.

Q. And who is your present district manager for the Evening Herald and Express?

A. Norton.

Q. Now, were you selling the Evening Herald and Express in the year 1937 when the newsboys started to handle both papers?

A. Yes, sir.

Q. And did you start to handle both papers at the time when the consolidation took place?

A. Yes, sir.

Q. Did you ever have a conversation with any district manager of the Evening Herald and Express with reference to the hours that you were to be on the corner? [506] A. Yes.

(Testimony of Philip Spampinato.)

Q. (By Mr. Mouritsen) Now, about when did this conversation take place?

A. When the papers went to a nickel Mr. Norton told me I should stay a little later at night——

Q. (Interrupting) Where did the conversation take place?

A. On the corner of Seventh and Alvarado.

Q. And who were present?

A. I think at that time Mr. Mitchell was working for Mr. Norton, and Mr. Norton and myself.

Q. Were they both present, Mr. Mitchell and Mr. Norton?

A. I believe they were both present.

Q. And yourself? A. And myself.

Q. Now, will you state what Mr. Mitchell or Mr. Norton and yourself said at that time?

A. Well, they said it would be advisable for me to stay later, until about 8:00 o'clock, to catch late sales.

Q. And prior to that time how late had you been staying on the corner? A. 7:30.

Q. And after that time did you remain until 8:00 o'clock?

A. I remained until 8:00 o'clock.

Q. At or about the time when you started to handle both the News and the Evening Herald and Express together did you [507] have any conversation with the district managers regarding the manner in which they were to be displayed?

(Testimony of Philip Spampinato.)

A. Yes, sir.

Q. (By Mr. Mouritsen) Well, I will restric it to the district manager of the Evening Herald and Express. Did you have a conversation respecting the manner in which they were to be displayed?

A. Yes, there was a dispute——

Q. (Interrupting) Now, can we fix about the time when you had this conversation?

A. It was about the time both papers—we were selling both papers.

Q. When you started to handle the News in addition to the Herald?

A. About a week or so before.

Q. Where did the conversation take place? [508]

A. On the corner of Seventh and Alvarado.

Q. And who were present at that time?

A. At that time was Andy, the News district manager, and Mr. Norton and some other man from the—I think it is circulation boss, I think, from the Evening News was down there and they were discussing how I should hold the News and the Herald in my hands and which paper I should display and how I should display them, and they came to some arrangement——

Q. (Interrupting) Were you present while they discussed that?

A. I was present, yes.

Q. Tell us further what was said.

A. Well, they told me how I should hold th

(Testimony of Philip Spampinato.)

paper and the arrangement was that I should hold the News on the outside, folded, where the Herald could be seen and hold the Herald in my other hand, and I was told to tell these other boys to do that.

Q. Who told you to do that?

A. Well, Mr. Norton was there and Andy and this other man and they all made an agreement and they told me the way I should hold it.

Q. And was this Andy the district manager for the——

A. (Interrupting) The Evening News at that time.

Q. Is that Andy Barragan? [509]

A. I believe it is Andy Barragan.

Q. And after that time did you so hold both papers as they had instructed you?

A. Yes, I did.

Q. And did you instruct the other boys on the corner to do that also? A. Yes.

Q. At the present time, Philip, are you permitted to make returns of all unsold copies of the Evening Herald and Express that you receive?

A. I am not permitted to make all return copies, no, sir.

Q. Do you receive a check from the Evening Herald and Express? A. Yes, sir.

Q. Do you receive a check from the News?

A. Yes, sir.

Q. Do you supply a number of other boys on

(Testimony of Philip Spampinato.)

your corner, or on the corners around your corner, with the copies of the Evening Herald and Express? A. Yes, sir.

Q. And do you do that at the same price at which you receive the Evening Herald and Express? A. Yes, sir.

Q. Do you also distribute papers or copies of the News to the other newsboys? [510]

A. Yes, sir.

Q. And you do that at the same price at which you receive them? A. Yes.

Q. Are you a member of the Newsboys Union?

A. Yes, sir.

Q. Have you ever held an office in that union?

A. Yes, sir.

Q. What office? A. Trustee.

Q. Has the district manager of the Evening Herald and Express ever furnished you a change apron? A. Yes, sir.

Q. Has the district manager of the News ever done that? A. No, sir.

Q. On your corner do you have any boxes that were furnished you by the district manager of the Evening Herald and Express? A. Yes, sir.

Q. Do those boxes bear the name of Evening Herald and Express? A. Yes, sir.

Q. Do you from time to time, or have you from time to time been given advertising matter by the district manager of the Evening Herald and Express? A. Yes, sir. [511]

(Testimony of Philip Spampinato.)

Q. And have you been given any instructions by the District Manager of the Evening Herald and Express relative to the display of such advertising matter?

The Witness: Yes.

Q. (By Mr. Mouritsen) And is the advertising matter that you have received similar to Board's Exhibit 7? A. Yes, sir.

Q. (By Mr. Mouritsen) And have you received advertising placards from the district manager of the News? A. Yes, sir. [512]

Q. (By Mr. Mouritsen) Do you recall, Mr. Spampinato, when you received such instructions from your District Manager on the Evening Herald and Express regarding the display of the advertising matter?

A. Well, they generally bring those cards around I think about once a week. They told me to put them on a box and see that I display them—make sure that I display those cards.

Q. In other words, do they give you such instructions on the occasions when they bring the cards around?

A. Yes, sir. They tell me to put them out and see that they are on the box—make sure that they are there.

Q. And is that also true of the News district man? A. Yes, sir.

Q. (By Mr. Mouritsen) Mr. Spampinato, did you have a conversation or conference with Mr.

(Testimony of Philip Spampinato.)

Norton respecting the number of papers that you were to have at night? [513]

A. Yes, sir.

Q. And about when did that conference occur?

A. About 1939, I think. About February or March.

Q. When did the conference occur?

A. The conference occurred while on my corner.

Q. Who was present?

A. Mr. Norton was present, and the Union Grievance Committee was present, and I was present.

Q. Well, can you recall the names of any members of the Union Grievance Committee?

A. Well, Pat Comorre, organizer, myself, Axel Rod, and some other member, I can't remember right now.

Q. Can you tell us what was said and done at that time?

A. Well, there was too many papers being left on the corner, and we were arguing about it and we came to the stage where I was ready to leave—after I would leave—we had 30 papers on the corner, and we have three corners, and I was supposed to leave 10 papers on each corner, that is, 30 sheets, after I left the place.

Q. You say you were arguing about it. You were arguing with whom?

A. Well, with Mr. Norton, and the Grievance

(Testimony of Philip Spampinato.)

Committee was there, and we were trying to cut down the papers so I wouldn't eat so many, and the rest of the boys who worked for me. [514]

Q. (By Mr. Mouritsen) Was that about all that was said at that conference?

A. At that conference it was all about how many papers, having to pay for too many papers, unsold copies, and so I wouldn't have to eat so many, and so that the boys wouldn't have to eat so many.

Q. What do you mean by this expression "eating" papers?

A. Well, paying for unsold copies.

Cross Examination

Q. (By Mr. Compton) Mr. Spampinato, do you sell magazines? A. Yes, sir.

Q. How many different magazines do you sell?

A. There is Liberty, the Post, Colliers, and Look.

Q. You purchase them at what price—for instance, the Saturday Evening Post?

A. 3½ cents.

Q. And you sell them for 5 cents?

A. Yes.

Q. And you sell the other magazines on the same sort of an [515] arrangement?

A. Yes, sir.

Q. And you retain the profits that you make from those sales? A. Yes, sir.

Q. And do you sell the Evening Herald and

(Testimony of Philip Spampinato.)

Express and News—what do you pay for the Evening Herald and Express?

A. The Herald costs me 3 cents a copy.

Q. And you sell it for 5 cents?

A. For 5 cents.

Q. And you retain the profits of all the papers that you sell? A. Yes.

Q. You testified concerning a change apron. Does the district man charge you for that change apron? A. No, sir.

Q. It is free and costs you nothing?

A. It costs me nothing.

Q. Do you use it? A. Yes, sir.

Q. It is a convenience, isn't it?

A. Yes, sir.

Q. It keeps you from getting your shirt front dirty? A. Yes, sir.

Q. And is a convenient way of holding your change? A. Yes. [516]

Q. You testified concerning some boxes furnished by the district man. Has any charge ever been made to you for those boxes?

A. No, sir.

Q. What do you use the boxes for?

A. For the papers, the property of the Herald, to put the papers on.

Q. You put the papers on the top of the box?

A. Yes.

Q. And that keeps them out of the dirt and filth of the street? A. Yes, sir.

(Testimony of Philip Spampinato.)

Q. It is a sanitary measure, isn't it? I mean it keeps your papers off the street.

A. Well, if it gets windy a lot of dust gets on them just the same.

Q. And keeps them away from passing dogs and what not? A. Yes.

Q. And you use the box, don't you?

A. Yes.

Q. And it is a convenience to you, isn't it?

A. Yes.

Q. Now, these advertising placards, do you have any objection to displaying those advertising placards?

A. No. They are given to me and they tell me to put them [517] in the box. They have slots in the box where I just slide them in.

Q. You just slide them in?

A. Yes. They tell me to slide them in and see that I have them in.

Q. And those placards advertise certain editions or special features of the paper? A. Yes.

Q. Do you think they help sell papers?

A. They should.

Q. Do you think they do? A. Yes.

Q. And the more papers you sell the more money you make? A. Yes.

Q. Are you quite positive in your particular case that you use the box furnished by the Evening Herald and Express?

A. Well, I have several boxes there. One is the

(Testimony of Philip Spampinato.)

Examiner box and naturally being higher when I am there I put my papers on the Examiner box.

Q. You don't use the Evening Herald and Express box?

A. I use the Evening Herald and Express box and when the Examiner comes I have to give him his box. The box belongs to him.

Q. Do you receive a check from the Evening Herald and Express? [518]

A. Yes, sir.

Q. What is the amount of the check?

A. I think it is $7.40.

Q. Does that voucher or check you receive show a deduction for Social Security tax?

A. Yes.

Q. Do you know how much?

A. It is six cents, I think. [519]

Q. At what time do the first off spot boys come on; that is, the off spot boys who get their papers at your corner?

A. I have one spot that comes to work at the same time I do. He is supposed to be on the corner at 9:00 o'clock.

Q. And when do the others come?

A. The others come at 3:00.

Q. So until 3:00 o'clock you distribute papers to no one except this one boy concerning whom you have testified? A. This one boy, yes.

Q. And at 3:00 o'clock, the editions that come on after that time you distribute to more boys, the so-called off spot boys? A. Yes, sir.

(Testimony of Philip Spampinato.)

Cross Examination

Q. (By Mr. Binford) Do you sell all editions of the News, Mr. Sampinato? A. Yes, sir.

Q. The early morning editions?

A. I mean the Evening News. [520]

Q. There is no Evening News. I am talking about the present now.

A. I sell from the fifth edition.

Q. You do not sell the morning edition, do you

A. No, sir.

Q. And have you ever received, or do you ever receive any of the copies of the News from any person except the district man connected with the News or their drivers or trucks? A. No, sir.

Q. Do you receive a check from the News?

A. Yes, sir.

Q. How much is that check?

A. $3.00.

Q. Is there a Social Security tax deducted from that? A. No.

Q. There is no Social Security tax deducted from that?

A. I mean it is deducted but I haven't deducted it.

Q. But it is deducted?

A. It is deducted, Social Security and Unemployment.

Q. Based on the amount of the check that you receive? A. Yes.

Q. Now, you say you also receive some kind of

(Testimony of Philip Spampinato.)

advertising placards from the Daily News; is that right? A. Yes.

Q. What do you do with those? [521]

A. They tell me to put them in their racks. They have a rack. I was instructed to place them on the rack.

Q. And you do that? A. Yes.

Q. What do those placards advertise?

A. Some feature in the paper.

Q. Some feature in the paper?

A. Yes, sir.

Q. They are to help you sell the paper, to help you advertise the paper?

A. To help advertise the paper.

Q. And that helps you sell it?

A. Yes, sir.

Q. As you say, it should, at least?

A. It should.

Q. How many boys do you furnish papers to?

A. I have five.

Q. Three on the other corners? On the other street corners?

A. I have one, two—I have three corners, one traffic. One stands in front of an A. & P. store.

Q. And you furnish all of those boys with papers?

A. I furnish all of them with papers.

Q. When the News delivers its papers to you does it deliver them all on one corner?

A. No. It is all according to what directions they are [522] coming in.

(Testimony of Philip Spampinato.)

Q. Well, I didn't say all the same corner every time, but do they leave them all at one corner or do they leave them at two corners?

A. Well, when he comes down Seventh Street he dumps them on my corner; if he is coming down Alvarado he dumps on the park corner.

Q. But he doesn't dump them on two corners on the same trip?

A. No, he doesn't dump them on two corners on the same trip.

Q. You take charge of the papers at whatever corner he dumps them, and you go to that corner if you are not already there and attend to passing them out to the other boys; is that correct?

A. I pick up those papers. I am responsible for them.

Q. Do you collect from the other boys?

A. Yes, sir.

Q. Do you make a profit on that transaction?

A. I don't make no profit on those boys.

Q. The only profit you get from your services is this check that you get from the News; is that correct? A. Yes, sir.

Q. Do you sell any other publications of any kind, magazines of any kind, except those that you designated to Mr. Compton in his examination?

A. Well, there is Look. I mentioned Look. And there is [523] the People's World rack.

Q. Do you have anything to do with that?

A. Yes, sir.

(Testimony of Philip Spampinato.)

Q. Do you sell the People's world?

A. Yes, sir.

Q. Do you make a profit on it?

A. Yes, sir.

Q. Do you sell any—pardon me; go right ahead.

A. I have the morning papers left there with me also.

Q. I was just going to ask you if you sold the Examiner sometimes. A. Yes, sir.

Q. And the Times sometimes?

A. And the Times. And the No. 4 edition of the News is also left there with me.

Q. So long as we did not get it all complete at first, you sell the News, and also occasionally some of the leftover morning edition of the News?

A. They are all left to me.

Q. And you sometimes sell the Times?

A. Yes.

Q. And the Examiner, and People's World. Right? A. Right.

Q. Talk so the Reporter can hear you. And the People's World? [524]

A. Yes.

Q. And the Herald and Express?

A. The Herald.

Q. And Look? A. Look.

Q. And Colliers. Go ahead; what else?

A. Post, Liberty.

Q. The Post and Liberty; is that right?

A. Yes.

(Testimony of Philip Spampinato.)

Q. Are there any others at all at any time? Do you sell the Ladies Home Journal, ever?

A. No, unless the magazines are brought to me to sell, and I just lay them on the box there and sell them.

Q. That is true of the People's World too, isn't it? A. Yes, sir. [525]

Q. What I am asking you with respect to the Herald and Express and the News, those papers are left there for you to sell, are they not?

A. Yes, sir.

Q. And sometimes copies of the Times and Examiner are left for you to sell, are they not?

A. Yes.

Q. You don't go to any particular point off of this corner to pick up any late papers and Examiners?

A. No, except the Evening News and Herald.

Q. Where do you go for them?

A. If he stops on the other corner I go over there to get them.

Q. I am talking about the four corners of 7th and Alvarado, apart from the intersection. You do not leave the general intersection; is that right? [526] A. No, sir.

Q. Is there any publication, newspaper, magazine, or printed matter of any kind or character that you sell, or that you have sold within the last year, other than the ones that you just designated?

The Witness: I can't recall—I don't——

(Testimony of Philip Spampinato.)

Q. (By Mr. Binford) None that you know of?

A. None that I know of. I may have and I may not. If they brought them there—I don't know.

Q. Do you deal in any other printed property, magazines, any other personal property?

A. That is all.

Q. Do you sell anything else besides printed matter, magazines and newspapers?

A. No. [527]

Redirect Examination

Q. (By Mr. Mouritsen) Who supplies you with the Saturday Evening Post and Liberty?

A. Joe Woods.

Q. That is the district manager of the Evening Herald and Express? A. Yes, sir.

Q. Mr. Compton asked you if it was not a fact that the more papers you sold the more money you made. I will ask you, Mr. Spampinato, if it is not a fact that the more papers you sell the more money the Herald and Express makes?

A. Yes, sir.

Mr. Compton: We will stipulate that, your Honor.

Q. (By Mr. Mouritsen) With reference to the number of copies of the Times and Examiner, and the earlier edition of the Daily News that you sell, approximately how many of these papers are left with you at the beginning of your selling day.

A. Well, whatever the Examiner boy does not sell, why, he leaves them there with me.

(Testimony of Philip Spampinato.)

Q. And as a general rule, about how many does he leave [528] there?

A. Well, I guess about 15 or 20.

Q. And how many of these as a general rule do you sell?

A. Well, there is about a bunch of ten, between them all.

Q. Between all three? A. All three.

Q. And about how many copies of the Times and Daily News does he leave over there?

A. Well, that is included.

Q. You mean they leave about 15—a total of 15 copies in those three.

A. Yes; about 7 or 8 Examiners, sometimes 10. If it goes tough for them and they don't sell any, he leaves them there sometimes. And it is more of an accommodation to the district man so he can pick up some late sales.

Recross Examination

Q. (By Mr. Binford) One question I forgot to ask the witness, and that is, do you get full returns from the News? A. Yes, sir.

Q. You don't have to eat any papers?

A. I don't have to eat any papers. [529]

Mr. Cosgrove: May it be stipulated Mr. Examiner, that the testimony of Philip Spampinato is not intended to apply to the Times Mirror case?

Mr. Mouritsen: That may be so stipulated.

Mr. Hall: May the same stipulation be entered into with respect to the Los Angeles Examiner?

(Testimony of Philip Spampinato.)

Mr. Mouritsen: It may be so stipulated.

Mr. Binford: May it be deemed Stockholders Publishing Company make the same motion with respect to the testimony of Mr. Spampinato in so far as it refers to conversation had or instructions given by Mr. Norton, the district man for the Herald and Express, subject to the same stipulation that was tendered in connection with all of the preceding witnesses?

Mr. Mouritsen: Yes, sir.

Mr. Binford: Respecting this line of testimony.

Mr. Mouritsen: That will be so stipulated.

Trial Examiner Kennedy: Same ruling.

MIKE BARRETT

called as a witness by and on behalf of the National Labor Relations Board having been first duly sworn, was examined and testified as follows: [530]

Q. (By Mr. Mouritsen) Mr. Barrett, where do you live?

A. 2500 Blossom Lane, Redondo Beach.

Q. Do you at present sell the Evening Herald and Express? A. I do.

Q. Where do you sell them?

A. Third and Broadway, the northwest corner.

Q. From whom did you obtain that spot?

A. Well, I knew it was open and I went down

(Testimony of Mike Barrett.)

to the office one morning and I asked Joe Woods if I could take the spot over and he said, "Sure."

Q. Joe Woods. That is the district manager of the Evening Herald and Express; is that correct?

A. Yes, sir.

Q. When did you obtain that spot?

A. Two weeks ago last Monday.

Q. At least, in the month of May, 1940; is that correct? A. Yes.

Q. What time do you commence in the morning to——

A. (Interrupting) Well, the boy on the main spot told me to show up at 9:30, and I come at 9:30 and quit at 6:20. [531]

Q. Do you receive a check from the Evening Herald and Express? A. No.

Q. Do you receive a check from the News?

A. No.

Q. Are you the main spot boy? A. No.

Q. Are you a member of the Newsboys Union?

A. Yes.

Cross Examination

Q. (By Mr. Compton) Mr. Barrett, do you sell any other newspapers than the Evening Herald and Express and News? A. None, no.

Q. Do you sell any magazines?

A. Magazines, yes.

Q. Which ones do you sell, Mr. Barrett?

A. Liberty, Post, Collier's and Look.

Q. Do you sell any other publications of any kind? A. None.

(Testimony of Mike Barrett.)

Q. Do you sell any other printed matter?

A. None.

Q. And you said you sold no other newspapers?

[532] A. No other newspaper.

Q. What do you pay for the Evening Herald and Express? A. Three cents.

Q. To whom do you pay that?

A. The boy on the main spot.

Q. The boy on the main spot? A. Yes.

Q. And what do you sell the Evening Herald and Express for? A. A nickel.

Q. That is the price that is printed on the paper?

A. The price that is printed on the paper?

Q. And you retain whatever you——

A. (Interrupting) I retain the two cents' profit.

Q. Do you do the same thing, that is, you handle the magazines in the same manner?

A. The same manner, yes.

Q. Did you state that you knew the corner was open? A. Yes.

Q. You didn't have to pay anybody for that corner, did you? A. No, sir.

Q. It just happened to be that there was nobody there——

A. (Interrupting) And I asked for the spot and he said, "Show up in the morning."

Q. He said, "Sure, go ahead"? [533]

A. Yes.

(Testimony of Mike Barrett.)

Cross Examination

Q. (By Mr. Binford) Do you sell all editions of the News or just from the fifth edition on?

A. From the fifth to the tenth.

Q. Are there any left over morning editions that you sometimes sell? A. No.

Q. You don't sell those at all? A. No.

Q. So you just sell from the fifth to the tenth?

A. I just sell the daily papers.

Q. You get your News from the wholesaler on the corner?

A. I get them from him and pay him as I get them, and I get returns on them. [534]

Q. And you get full returns on them?

A. He pays me back for what I have left. I pay him in advance.

Q. You pay him in advance? A. Yes.

Q. And you keep the difference between what you pay him and what you sell it to the customer for?

A. Yes. I keep all the difference. In other words, they are paid for first.

Mr. Binford: That is all.

Mr. Compton: The same is true in regard to the Herald?

The Witness: No, I pay at the end of the evening.

Mr. Compton: You pay at the end of the evening and you get full returns on the Herald?

The Witness: I do.

(Testimony of Mike Barrett.)

Redirect Examination

Q. (By Mr. Mouritsen): Who brings you the Saturday Evening Post and Liberty?

A. I get them from the main spot the same as I do my papers.

Q. And have you observed who brings them to the main spot?

A. I have never paid no attention. [535]

Trial Examiner Kennedy: Anything further? Do you have a Social Security card?

The Witness: I have, yes.

Trial Examiner Kennedy: When did you take it out?

The Witness: I think in 1936 or 1937.

Trial Examiner Kennedy: Have you made any change in the registration on it since you started to work down here selling papers?

The Witness: There was no job on it. I was working for the city at the time.

Trial Examiner Kennedy: But I mean since you started to [536] work down here in May, 1940, have you made any change in the registration.

The Witness: No, I haven't.

Trial Examiner Kennedy: Do you know who is registered as your employer on the Social Security?

The Witness: Nobody. I was working for the city at the time.

Trial Examiner Kennedy: Since you have been down here on this corners, selling newspapers.

(Testimony of Mike Barrett.)

starting in May, 1940, do you know of any arrangement made by anyone to cover you for Workmen's Compensation?

The Witness: I do not.

Trial Examiner Kennedy: Who are you working for now?

The Witness: Well, I sell the Herald and Express and News, the Evening News.

Trial Examiner Kennedy: Who do you think you are working for?

The Witness: Well, I think I am working for the Herald, and the News too.

Mr. Cosgrove: Will it be stipulated, Mr. Mouritsen, that the testimony of the witness Mike Barrett is not [537] applicable to the Los Angeles Times case?

Mr. Mouritsen: That will be so stipulated.

Mr. Hall: Will the same stipulation be made with reference to the Los Angeles Examiner?

Mr. Mouritsen: I will so stipulate.

PATRICK COMORRE

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and further testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Now, Mr. Comorre, I believe you testified earlier that you were an organizer for the Newsboys Union for approximately a year.

(Testimony of Patrick Comorre.)

A. That is correct. [538]

Q. And during what period was that, if you recall?

A. I believe to be pretty close would be between July, 1938, to July of 1939.

Q. Now, during that period did you become acquainted with the various newsboys selling the Los Angeles Evening Herald and Express?

A. Yes, I did.

Q. Will you explain how you became acquainted with them?

A. Well, as an organizer you are supposed to try to get them to join the union, and naturally you go where they are at to talk to them and try to get them to come into the union, explain the benefits that a union can fetch them, and so forth and so on.

Q. Did you become familiar in general with their various operations?

A. Yes, sir, pretty much so.

Q. And the hours during which they operate?

A. That is right.

Q. And the other conditions under which they work? A. Yes, sir.

Q. Now, Mr. Comorre, I wonder if you will explain what you mean by check men, so far as the Evening Herald and Express is concerned?

A. Well, I consider a check man a man or a newsboy or news vendor [539] who receives a check from the Herald and Express. [540]

Friday, June 14, 1940.

Met, pursuant to adjournment at 9:30 o'clock a. m. [552]

Mr. Mouritsen: Mr. Examiner, the Union at this time desires to move to amend the second amended petition filed in the matter of Hearst Publications, Inc., Los Angeles Evening Herald and Express Department, the jurat bearing date June 6, 1940, which is in evidence as Board's Exhibit 1-BB, so that the unit claimed to be appropriate will appear as "All full-time newsboys and check men who are engaged to sell the Los Angeles Evening Herald and Express within the city limits of Los Angeles, California, excluding bootjackers, temporary, casual and part time newsboys."

Trial Examiner Kennedy: What is the amendment, now? Read that again, please.

Mr. Mouritsen: "All full-time newsboys and check men who are engaged to sell the Los Angeles Evening Herald and Express within the city limits of Los Angeles, California, excluding bootjackers, temporary, casual and part time newsboys."

Trial Examiner Kennedy: In other words, to eliminate the words "spot newsboys"?

Mr. Mouritsen: "Main spot."

Trial Examiner Kennedy: "Main spot" newsboys.

Mr. Mouritsen: And in explanation of that change, I may state that this does not indicate a change in position [554] of the newsboys, but in attempting to define these various terms we ran into some difficulties, and the unit claimed under

the amendment is the same unit claimed under the unit before amendment, but it is merely to avoid certain difficulties in defining the terms used.

Trial Examiner Kennedy: Is there any objection to the motion? Granted.

Mr. Mouritsen: May this be marked Board's Exhibit next in order?

Mr. Cosgrove: Could we have stated for the record the case in which that amendment applies?

Mr. Mouritsen: That applies in case XXI-R-928.

Trial Examiner Kennedy: What number will this next exhibit be?

The Reporter: Board's Exhibit 8.

Trial Examiner Kennedy: Board's Exhibit 8.

Mr. Compton: If the Examiner please, before the stipulation is offered in evidence, I would like to have a stipulation with Mr. Mouritsen to this effect: that in joining in a stipulation signed by the petitioner we do not waive our objection to the testimony attempting to prove the legal existence of the petitioner; in other words, we still want to make any points we may have, that the so-called union is not a legally constituted union, and so on; and that the stipulation here is simply for the purpose of definition. [555]

Trial Examiner Kennedy: You wish to offer this stipulation on behalf of the Board?

Mr. Mouritsen: Yes. I think that stipulation would be acceptable.

Trial Examiner Kennedy: Is there any objec-

tion to the receipt in evidence of Board's Exhibit 8 for identification? Received.

(Thereupon the document referred to was received in evidence and marked Board's Exhibit 8.) [Exhibit No. 8 is set out at page 58 of this printed record.]

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the stipulation which has just been received and marked for identification—I did not catch the number.

Trial Examiner Kennedy: 8. Board's Exhibit 8.

Mr. Cosgrove: Thank you. ——is not applicable to the Los Angeles Times case?

Mr. Mouritsen: Yes; that may be so stipulated.

Mr. Hall: May the same stipulation be made with reference to the Los Angeles Examiner case?

Mr. Mouritsen: Yes; it may be so stipulated.

Mr. L. B. Binford: And the Stockholders Publishing Company case?

Mr. Mouritsen: Yes; that may be stipulated.

Trial Examiner Kennedy: Now, Mr. Hall, did you have something you want to take up? [556]

PATRICK COMORRE

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, testified further as follows:

Direct Examination

Q. (By Mr. Mouritsen): When you were on the stand yesterday, Mr. Comorre, I believe you

(Testimony of Patrick Comorre.)

testified that during the period when you were organizer and since that time you have contacted [559] a number of these full time hustlers and check men who sell the Los Angeles Evening Herald and Express? I will ask you if that is correct?

A. That is correct.

Q. Will you explain just what these contacts consisted of? How did you meet these men? As an organizer?

A. You mean how I actually done it?

Q. Yes.

A. Well, I went to the corners where they were at and talked to them about joining the Union, and also about their conditions and what their—what they was considered as newsboys, and what time they start, what time they quit, and all the things.

Q. Did you visit the corners on more than one occasion? [560] A. Yes, I did.

Q. Please describe your activities in that respect.

A. Practically all the corners, probably on eight or ten occasions, and in some instances as high as 20 times—some corners.

Q. Recently—that is, in the last couple of months—have you had any contact with these newsboys? A. I have.

Q. Will you explain what that contact was?

A. Well, just the last three or four months I have been around practically all the corners again;

(Testimony of Patrick Comorre.)

that is, on two or three different occasions, and sometimes more. I am also a shop steward of the—what you call a shop steward, a man that helps collect the dues, and having a car I was able to get out in the outskirts, out of the downtown district, more so than anyone without a car, and naturally I used to have a list of newsboys to collect dues from, and also go out on occasions where there was grievances; and that way I came in contact with practically all of them. And I also—further than that, I have checked just recently practically all the corners from my own knowledge so I would know just about how many newsboys there were and how many different types of newsboys there were so I would have that in case I needed that information.

Q. Can you in general tell us what are the characteristics [561] of the full time newsboys and check men who you claim are within the appropriate unit?

Mr. Hall: You are referring, counsel, to the alleged unit affecting the Herald and Express only?

Mr. Mouritsen: Yes, affecting the Herald and Express only. [562]

A. Well, as I find them, most of the check men, practically in all cases with the exception of a few there, full grown men, or young men 21 or 22 years old, and in most cases older men, and

(Testimony of Patrick Comorre.)

that probably have families and lots of them—most of them do have families—and men that depend on that work for their livelihood. And that goes for the full time men also. In fact, full time men are mostly all with lesser exception than the check men. That is with—they are more so that type of person than of the check men. We have a few check men, I would say, that—on afternoon spots are good sized boys, probably in high school, that gets out of school early and comes out and takes care of the main spots; that is, the wholesale job, as they call it, on that intersection or where he may be. [563]

Q. Now, from your observation and from your investigation, Mr. Comorre, are you able to state what are the ages in general and characteristics of the part-time newsboys?

A. Well, what we consider part-time——

Q. That can be answered yes or no?

A. Yes.

Q. Will you please state generally the ages and the characteristics of these part-time newsboys?

A. Well, the part-time newsboys are mostly, in all cases [564] practically, that is, on the Herald and Express and the News—but I think the question is for the Herald and Express?

Q. The Herald and Express.

A. They are boys that go to school and get out of school and do that work, or some of them may go to school half a day and have a fairly good

(Testimony of Patrick Comorre.)

spot, and come out early, or something like that—kids that go to school, I would say.

Q. In between what hours do these part-time newsboys work, or do they operate?

A. Well, I would say most of them work, from what I have checked, that most of them work from around 2:30 until 6:30 or 7:00 o'clock.

Q. And do they in some instances start later than 2:30?

A. They do. In some instances they start at 3:30, that is, boys that sell papers on the streets. That is not including the route boys or anything like that.

Q. In your activities as organizer and since that time, have you made any attempt or attempts to organize other than newsboys in the city of Los Angeles?

A. No, we haven't. That is, I haven't. I don't think anyone has.

Q. And so far as you know, have any other efforts been made by the union to organize the newsboys other than in the city of Los Angeles, that is, this local union?

A. In this particular case, that is, the Herald and Express [565] newsboys?

Q. Or this particular Local #75.

A. Well, the Local, where the united fellows that work out—we try to get all of the fellows that work out of the offices or out of the main plant here, the district men that work out of the main

(Testimony of Patrick Comorre.)

plant, that is, the night newspapers or the morning newspapers,——

Mr. Hall: Is this evidence offered against the Examiner and the Times?

Mr. Mouritsen: No; only the Herald and Express and News.

Mr. Hall: He is referring to night men.

A. I am speaking of something else. Maybe I am confused on the question, Mr. Examiner.

Q. (By Mr. Mouritsen): Well, so far as the newsboys themselves for the Evening Herald and Express are concerned, do you know of any attempts by the Union to organize those, other than those who operate within the city of Los Angeles?

A. No, I don't know of any attempt made to organize anybody outside of the city.

Mr. Mouritsen: Mr. Compton, may it be stipulated that all full-time newsboys and check men receive the papers at the same price?

Mr. Compton: Well, all we can say is that as far as is known to the executive officers, that is correct.

Mr. Mouritsen: Thank you. I think that is all, [566] Mr. Comorre.

Cross Examination

Q. (By Mr. Compton) Mr. Comorre, do you know how many individuals in the city of Los Angeles are engaged in the selling of the Evening Herald and Express at any time during a particular day?

(Testimony of Patrick Comorre.)

A. Well, about 650 or 700.

Mr. Cosgrove: Is that just Herald boys or all boys?

A. Just Herald. Of course, they sell the News too, but I mean we are speaking of the Herald right now. [567]

Redirect Examination

Q. (By Mr. Mouritsen) And, Mr. Comorre, from your investigation can you state approximately how many full time newsboys and check men there are in the City of Los Angeles who sell the Evening Herald and Express? A. Yes.

Q. Will you please so state?

A. I judge about—well, I will be pretty sure in saying about 210 or 212. [569]

Q. Mr. Comorre, we have stipulated, as I recall, that wholesalers and check men are synonymous terms. Now, can you tell me how many check men of that 210 or 212—I withdraw that and reframe my question. Can you tell me how many check men are included in that 210 or 212 men you estimate to be in the unit? A. Yes, I can.

Q. How many?

A. Approximately, I would say about 110 or 112 or 113, or something like that.

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Comorre, you estimated that there were some 600 newsboys, 600 or 700, in the city and of that there were about 220 check men and—210 or 212 check men and full time

(Testimony of Patrick Comorre.)

hustlers. Of what does the difference between 212 and the 700 newsboys consist? What type of newsboys are they?

A. Well, the 210 or 212, that is what I considered was the full time newsboys and check men, and the rest of them were boys that come out after school, as I think I explained before in the previous question. [570]

Trial Examiner Kennedy: Anything further? Now, as to this large balance here, the difference between 210 and the six or seven hundred, has the Union ever taken any of those in?

A. Well, when they have wanted to come in or asked us to take them in we have taken them into the Union, but we prefer not to have them.

Trial Examiner Kennedy: Do you have any idea of about how many of that class you have in the Union now?

A. No. They go and come so much that you can't hardly figure them. At the present time I don't know.

Trial Examiner Kennedy: Well, what is the reason you don't want them in the Union?

The Witness: Well, because they—well, my reason would be that they don't work steady; they are going and coming and they don't depend on it for a livelihood. That is, it don't make much difference whether they are working or not. In most instances they just work for spending money or something like that. [571]

(Testimony of Patrick Comorre.)

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Comorre, these part time hustlers, or school boys in general, do they earn as much—are their earnings as great as the full time hustlers—or newsboys or check men?

A. No.

Q. And, in general, could you state how much they make on their spots; that is, the part time boys?

A. Well, the part time boys—it will vary. It all depends on the importance of the corner, how much traffic or how many people or what size building is on that corner. In some cases the newsboys make as low as 50 cents and in some cases they make maybe a dollar and a half or two dollars.

Q. That is, the part time boys?

A. That is right. [581]

Mr. Cosgrove: May we have a stipulation to the effect that the testimony given by the witness Comorre since he was recalled to the stand yesterday afternoon late, and including his testimony this morning, is not intended to apply to the Los Angeles Times?

Mr. Mouritsen: It may be so stipulated. Also with reference to the Examiner.

Mr. L. B. Binford: And the Herald and Express —I mean, the News?

Mr. Mouritsen: Yes. [583]

LOUIS SCHWARTZ,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Louis Schwartz.

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Schwartz? A. 727 North Soto.

Q. In the City of Los Angeles?

A. Yes, sir.

Q. And do you at the present time sell the Los Angeles Evening Herald and Express?

A. Yes, sir, I do.

Q. And the News? A. Yes, sir.

Q. At what spot?

A. Sixth and Spring; the northwest corner.

Q. And are you a member of the Newsboys Union? A. Yes, I am.

Q. And have you ever acted on any of the committees of that union? A. Yes, sir.

Q. I will ask you in particular if you have ever acted on a constitutional committee of that union?

[584]

A. Yes, sir.

Q. And do you recall about when you became a member of the constitutional committee of the Union?

A. It was between the month of—either the latter part of June or the first of July.

(Testimony of Louis Schwartz.)

Q. What year? A. 1937.

Q. And did that committee act upon the adoption of any—or upon the consideration of any constitution for the Newsboys Union?

A. Yes, sir.

Q. Did it hold meetings? A. Yes, sir.

Q. And did it present to the union as a whole any recommendations regarding a constitution?

A. Yes, sir. [585]

Q. (By Mr. Mouritsen) Now, Mr. Schwartz, were you present at a general meeting of the Newsboys Union at which were presented various proposals regarding a constitution for the Newsboys Union? A. Yes, sir, I was.

Q. And can you give us the approximate date of that meeting? [586]

A. You mean when it was finally adopted?

Q. Yes, the meeting at which the constitution was finally adopted.

A. I think it was in October.

Q. Of what year? A. 1937.

Q. And was any action taken by this meeting that you attended regarding the adoption of a constitution for the newsboys union? A. Yes.

Q. What action was taken?

A. A motion was made and seconded that the constitution presented by the C.I.O. nationally be adopted as a whole, and then an amendment was made that the recommendations of the constitutional committee as regards certain changes in cer-

(Testimony of Louis Schwartz.)

tain of the articles of the draft constitution of the C.I.O. be amended and adopted in full with the recommendation of the constitutional committee. [587]

Q. (By Mr. Mouritsen) And you were a member of the constitutional committee that made certain recommendations? A. Yes, sir.

Q. Now, after that meeting, were the recommended changes to your knowledge embodied in mimeographed or printed form?

A. Yes, sir.

Q. Mr. Schwartz, I will show you a document that has been marked Board's Exhibit 5 for identification, and I will ask you if that is a copy of the constitution that was adopted at this meeting to which you refer. A. Yes, sir. [588]

Q. (By Mr. Mouritsen) Mr. Schwartz, I note that this document, namely, Board's Exhibit 5 for identification, also shows or contains C.I.O. rules for industrial unions. I will ask you if those rules for industrial unions were adopted at that meeting to which you referred. A. Yes, sir.

Q. And I note that the document, that is, Board's Exhibit 5 for identification, also contains suggested standing rules for local industrial unions. I will ask you if at that meeting the suggested standing rules for local industrial unions were adopted. A. Yes. [589]

Q. (By Mr. Mouritsen) Now, Mr. Schwartz, I show you a document that has been marked Board's Exhibit 5-A for identification, and I will ask you

(Testimony of Louis Schwartz.)

if the information appearing upon the document from Article I to the bottom of the page, and Section 12 on page 2, are the changes suggested by the constitutional committee of which you were a member. Now, please read those——

A. This last and here?

Q. No, merely from Article I.

A. O.K. (Witness reads document referred to silently.) Yes, sir.

(Thereupon the document referred to was received in evidence and marked Board's Exhibit 5-A.) [590]

BOARD'S EXHIBIT 5-A

THE CONSTITUTION OF THE NEWSBOYS' L. I. UNION #75 AS OF DECEMBER 5.

Kindly Preserve This Bulletin To Keep Your Constitution Up-to-Date. There Will Be Other Editions As Changes Are Made From Time To Time

A Constitutional committee was elected at the Meeting of October 10th to prepare a Constitution in accordance with C.I.O. purposes. This committee recommended the following articles to the members for adoption before the elections of October 17:

Article IV

Section 4: Only those who have paid dues in full are eligible for office.

(Testimony of Louis Schwartz.)

Section 5: Elections shall be by secret ballot, and it shall require a majority of votes cast to elect.

Section 1: The offices of recording secretary and financial secretary shall be consolidated, and the officers of the Union shall be a President, Vice-President, Secretary, Treasurer, Sergeant-At-Arms, three Trustees, and an executive board composed of all the officers and five additional members.

Section 2a: All officers elected in this election shall remain in office until January 1, 1939.

These articles were adopted unanimously on October 17.

At the meeting of November 19, the Constitutional committee reported that it had ordered one hundred (100) copies of the Constitution drafted for Local Industrial Unions by the C.I.O. and recommended that the remainder of the Constitution be adopted as printed.

This motion was carried unanimously, with an amendment that the Constitutional committee's recommendations be followed to fill in all blanks. These recommendations from the minutes of the meetings of October 14, and November 7 are as follows:

Article I

Section 1: This Union shall be known as the Newsboys' L. I. Union, #75 of Los Angeles, California.

(Testimony of Louis Schwartz.)

Article III

Section 1: The membership of the Union shall include all workers employed in the general distribution and sale of newspapers, magazines, and periodicals with the exception of persons who have the power to hire and discharge.

Article IV

Section 2: The officers shall be elected at the first membership meeting in January.

Section 2b: The Trustees shall hold office for one year.

Section 6: At the time of nominations for office a balloting committee of five members shall be elected by the rank and file, but no candidate for office shall be on the balloting committee.

Section 9: The President shall preside and preserve order at all meetings of the Union and of the Executive Board; enforce the rules, subject to the approval of the Executive Board, appoint all committees not otherwise provided for, and transact such other duties as are usual to the office of President, or that may be required by the Union.

Section 12: The Financial Secretary shall collect and receive all monies due the Union, and turn the same over weekly to the Treasurer, and take his receipt therefor. The remainder as printed.

The changes for Article IV, Section 1, Section 2a, Section 4 and Section 5 are mandatory. The other

changes as recommended by the Constitutional committee may be followed until the rank and file rule otherwise.

Q. (By Mr. Mouritsen) And did you remain a member of that Union after the adoption of the constitution? A. Yes, sir.

Q. Did you attend the meetings of the organization? A. Yes, sir.

Q. Were officers elected? A. Yes, sir.

Q. Did you participate in the election of such officers? A. Yes, sir.

Q. Did you serve on any other committees of the organization? A. Yes, sir.

Q. Now, from what men were the officers of the Union elected?

A. From all newsboys selling newspapers in the City of Los Angeles.

Q. And of your own knowledge do you know that the newsboys selling the Evening Herald and Express were members of the Union after that time?

A. Yes, sir.

Q. And of the News? A. Yes, sir.

Q. And of the Times? A. Yes, sir.

Q. And of the Examiner? A. Yes, sir.

Q. And of your own knowledge do you know whether or not [591] newsboys selling all of those papers acted upon various committees of the organization? A. Yes, sir.

(Testimony of Louis Schwartz.)

Q. And did they so act? A. Yes, sir.

Q. Did the newsboys of all those organizations participate in the election of officers?

A. Yes, sir.

Q. Did you act upon any other committees of the organization after the time when you acted upon the constitutional committee? A. Yes, sir.

Q. Did you ever act upon a grievance committee of the Union? A. Yes, sir.

Q. While you were a member of the committee did it on any occasion take up grievances with any of the publishers; that is, the Evening Herald and Express, the News, the Times, or the Examiner?

A. I was only on committees that visited the management of the Herald and Express and the News.

Q. I see. And can you state just in general what matters or what grievances the committee took up while you were a member of it?

A. We took up grievances in regard to getting stuck on papers, told to come out in the morning of an election and fight extras and also not getting enough papers of certain [592] editions; that is, regulate the papers so we could really sell more.

Q. Well, now, with which representative of the management of the Evening Herald and Express did you take up such grievances?

A. With Mr. Harrison.

Q. While you were a member of the Grievance Committee of the Union, Mr. Schwartz, did you as a member of that committee take up grievances with

(Testimony of Louis Schwartz.)

representatives of the Stockholders Publishing Company, Inc.? A. Yes, sir.

Q. And you understand the Stockholders Publishing Company publishes the News?

A. Yes, sir.

Q. And with which representative of the paper?

A. Bob Smith, Dutton O'Brien, and I think Lee Reichert was in at one of the conferences. I don't think he was present when we got there, but I think Mr. Smith called him in.

Q. And while you were a member of the Grievance Committee did that committee take up various grievances with district managers of the Evening Herald and Express?

A. That is out of the Herald office on the corners, you mean, things like that?

Q. Well, this is the district managers as contrasted with taking up grievances with Harrison himself. [593] A. Sure.

Q. Would you state the names of any district managers with whom you took up grievances as a member of that committee?

A. Yes. With Mr. Norton, Joe Woods, Bill Abel, if you call him a district man—I don't know his term—with Jake Gratz.

Q. But did you take up any grievances with any district managers of the News? A. Yes.

Q. And will you please name those men, please?

A. Martinez—well, that's about all in an official capacity, except speaking casually. More or less we

(Testimony of Louis Schwartz.)

didn't want to raise no beef, there was so many, so—— [594]

JOE ROTH,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, testified as follows:

Trial Examiner Kennedy: Your full name?

The Witness: Joe Roth.

Direct Examination [613]

Q. (By Mr. Mouritsen) Where do you live, Joe? A. Me? 759 Crocker Street.

Q. That is in the City of Los Angeles?

A. I am here about—I come here in 1894.

Q. But the street where you live is in the City of Los Angeles, is that right?

A. Yes, that is where I live.

Q. And do you sell papers for the Evening Herald and Express?

A. The last six years, yes.

Q. And for the News? A. The News, yes.

Q. Now, where do you sell those papers?

A. Huh?

Q. Where do you sell them, on what corner?

A. Second and Main.

Q. And do you sell them or have you sold them there for six years?

(Testimony of Joe Roth.)

A. Six years, the 2nd of May it was six years.

Q. Who is your Herald and Express district manager? A. Joe Woods.

Q. Has he ever removed you from that corner?

A. He fired me twice.

Q. Well, when did he last fire you?

A. The last time—oh, it is about—I don't know exactly. [614] I made a complaint to him. I don't know what month any more. He fired me on account I had too many returns.

Q. About how long ago was that?

A. Oh, I guess just about six or seven months, or something; I don't remember exactly.

Q. Now, did you ever have a conversation with Joe Woods respecting the price at which you were to sell papers?

A. Yes, I sold it to customers on Second Street for four cents and he told me to charge five cents.

Q. Wait a minute. About when did this conversation take place?

A. It took place at Second and Main.

Q. About what time?

A. A quarter to 12:00.

Q. How long did it take place after he had put you off the corner?

A. He took me off the corner before that.

Q. And then did he put you back on the corner?

A. After he put me back on he told me I had better charge five cents. [615]

Q. Now, Mr. Roth, I want you to tell me if you

(Testimony of Joe Roth.)

can the approximate date when this conversation with Joe Woods occurred about the price of the paper.

A. I couldn't say exactly which month, but I made a complaint to him there. He got the date, I guess.

Q. To Mr. Comorre? A. Yes.

Q. Did you take the matter of your discharge or your firing up with Mr. Comorre?

A. I took it up to the Union, to him, yes.

Mr. Mouritsen: May it be stipulated that Mr. Comorre, who was present at that time, if called would testify that this occurred—when he took up Joe Woods putting this man off the corner was about January of 1939?

Mr. Hamblin: That is when this conversation took place?

Mr. Mouritsen: And that this conversation about the [616] price took place shortly after that time, as the witness has already testified. He said it was a few days after he was put back.

Mr. Hamblin: We will stipulate that the witness will no doubt eventually testify that the conversation took place a few days after the month of January, 1940.

Mr. L. B. Binford: 1940 or 1939?

Mr. Mouritsen: 1939. Did you say 1940, Mr. Hamblin?

Mr. Hamblin: 1939.

Mr. Mouritsen: Well, that stipulation is accepted.

(Testimony of Joe Roth.)

Q. (By Mr. Mouritsen) Now, was anyone else present when you had this conversation with Joe Woods about the price of the paper?

A. Oh, I think there was a couple in the car but I don't remember who it was. It was in front of the car when I returned the magazines, you know, in the car, a quarter to 12:00 or a quarter after 12:00.

Q. Were those two persons with Joe Woods in his car?

A. Yes, those fellows work for him.

Q. You don't know their names? A. No.

Q. Will you state what you said to Joe Woods and what Joe Woods said to you?

A. Well, he put the fellow on the corner, and he found out he sold two papers to two Jewish merchants on Second Street [617] for four cents. He said, "You can't sell them papers for four cents. The price is five cents. If I find out you do that again I'll fire you again."

Q. And after that time did you sell the paper for five cents to those two Jewish gentlemen?

A. Yes. Since then I sell it for five cents.

Cross Examination

Q. (By Mr. Compton) How old are you?

A. Me? 73.

Mr. L. B. Binford: I assume it will be stipulated the testimony of this witness is not intended to be binding upon the Stockholders Publishing Company?

Mr. Mouritsen: It may be so stipulated.

(Testimony of Joe Roth.)

Mr. Cosgrove: Nor upon the Times-Mirror?

Mr. Mouritsen: That is correct. Nor the Examiner. [618]

Afternoon Session

(Whereupon, at 1:30 p.m., the hearing was resumed, pursuant to the taking of recess.)

CHARLES C. SPILLERS,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Spillers? A. I live 87-88th Place.

Q. Is that in the City of Los Angeles?

A. Yes, it is.

Q. Do you sell the Evening Herald and Express at the present time? A. Yes, I do.

Q. And the News? A. The News.

Q. At what spot? [619]

A. Food Town Market, known as Food Town Market, between 87th and 88th Place.

Q. How long have you been handling the Evening Herald and Express and News at that spot?

A. Well, whenever I sell them, about six months, about that—six or seven months.

Q. And who put you on the spot?

(Testimony of Charles C. Spillers.)

A. Well, a fellow by the name of Tony—I don't know what his other name is. He gave me the job.

Q. Is he district manager for either of those papers?

A. He was at that time. He had charge of circulating papers. He had at that time but he has moved now; he is off on another place.

Q. Which paper did he bring around to you at that time?

A. Brought the Herald and Express.

Q. Who is your present district manager for the Herald and Express?

A. I can't think of his name. I haven't got familiar with his name yet. I don't know what his name is.

Q. Now, when Tony put you on the spot did he have any conversation with you with respect to where you were to operate?

A. Well, yes. I was selling at the Food Town Market.

Q. Just where did the conversation take place?

A. At the Food Town Market. I went to him for the job. [620]

Q. Who was present other than you and Tony?

A. Well I don't know of anybody who was present at that time. I don't know of anyone.

Q. Was this Tony the man who brought the copies of the Evening Herald and Express to you?

A. He is the one.

Q. Now, would you relate the conversation that took place at that time?

(Testimony of Charles C. Spillers.)

A. Well, I just told him I would like to take the place [621] over, or I asked him for the place and he told me I could have it, and that is about all there was to it. He just told me where I had to work and he said I would have to stay there until 8:00 o'clock; that is, he would like for me to stay there until 8:00 o'clock at night, and I would go on at 10:00 in the morning and be there at 10:00 in the morning.

Q. Now, what did he say with reference to where you were to work?

A. Well, he just told me that was my place to work; that is, in front of the market itself. I was to operate there in front of the Food Town Market, no other place.

Q. Is that all that you can recall of that conversation?

A. Yes, that is all that I recall. That is about all there is to it. I asked him for the place before that, previous to that, and he told me when it come open I could have it.

Q. For the purpose of refreshing your recollection, did he say anything with reference to whether or not you were to operate inside of the market?

A. No, I don't get inside of the market at all. They won't let you work in there, anyway.

Q. Now, do you receive a check from the Herald? A. Yes.

Q. The Evening Herald and Express?

A. Yes, I do.

(Testimony of Charles C. Spillers.)

Q. And do you count out papers to other newsboys? [622]

A. Yes, I give them to three others.

Q. And did Tony say anything to you at that time respecting these other newsboys?

A. No, nothing only just we have to respect one another's place, you know, where we work. They have a right to the place they work and I do mine. We generally divide the line where we work.

Q. I mean did he say anything in respect to the number of papers to give these boys?

A. Yes, every issue we get so many papers out and that is what they get and that is all.

Q. And do you then check these other boys in?

A. No, I check nothing only just one of the boys on the spot there that works for me.

Q. Do you know who the branch manager of that territory is?

A. No, I have never been over there. I know where it is at. That is, it is in Green Meadow, but I don't know who the main man is. I never had any dealings with him at all.

Q. When you started did you also handle the News, the Daily News?

A. No, I got the News later. He turned the News over to me later, the News man did.

Q. Do you know the name of the News man?

A. Harry something. I don't know what his name is. When you are on the corner that way

(Testimony of Charles C. Spillers.)

you never pay attention to what the [623] name is, just Harry or whatever it is.

Q. Do you now perform the same operations with reference to the News that you do with reference to the Herald; that is, count them out to several of these other boys?

A. Well, the News, I handle them strictly by myself. Nobody gets the News at all. I handle them myself. I don't hand them out to anybody.

Q. Do you receive a check from the News at the present time? A. I do.

Q. At the present time are you allowed to return all unsold copies of the Evening Herald and Express that you have?

A. Well, I am to keep 10. We would for a while—we had no returns of the papers, but just here lately we get a return, and all I am supposed to keep, I am supposed to keep ten of them. That is, we call it eating them, I am supposed to eat ten of them, but here the last two weeks we have done a little better than that. I have only had to eat about half of them, five or six. I get five and the other fellow gets five, and all over 10 he takes back himself.

Q. When you say you are to eat five and the other fellow is to eat five, what other fellow do you mean?

A. Well, the boss himself, he takes them back. That is, the new man does that now. He splits it with me. I don't have to eat them.

Q. With reference to the name of the News district manager, [624] I will ask you if his name is Harry Reynolds.

(Testimony of Charles C. Spillers.)

A. I think that is his name. I am not sure. I think that it is Harry Reynolds. I have knew him a long time but I just never did know what his other name was.

Q. Now, prior to the time when you started to work on the Food Town Market spot, did you work on any other spots?

A. Well, I worked at Slauson and Figueroa for a while.

Q. And about when was that?

A. It was in 1937.

Q. Can you fix more definitely the time?

A. No, I can't tell you just what time it was. It was along in 1937. I don't know just what month it was. [625]

Q. How long did you sell on that spot?

A. I didn't sell but just a little while.

Q. Well, about how long in weeks?

A. I suppose about a month or something like that, a month and a half. I figure about a month or a month and a half. I am not sure, but I think it was about a month or a month and a half.

Q. Can you fix the period during which you sold? Was it in the summer of 1937?

A. It must have been in the—probably in the summertime. I know it was kind of warm, nice and warm. It must have been in the summertime.

Q. And do you recall the name of your Evening Herald and Express district man at that time?

A. Just the same as the other, Harry is all I

(Testimony of Charles C. Spillers.)

know. I know his name when I hear it, but it is Harry.

Q. I will ask you if his name was Plotkin.

A. Harry Plotkin was his name.

Q. During the period while you were selling on Slauson and Figueroa, did you have any conversation with Plotkin regarding the price at which you were to sell the Evening Herald and Express? [626]

A. Oh, no; I knew what the price was on the paper. There was no question about that at all. He just told me. I asked him for the place and he gave it to me.

Cross-Examination

Q. (By Mr. Compton): Mr. Spillers, at the present time you stated that you would check in for the Evening Herald and Express? A. Yes, sir.

Q. For a boy that works——

A. Works for me.

Q. Works for you? A. That is right.

Q. Does that mean he works——

A. I give him the issue of the papers, and he works on the front for me.

Q. On the same spot?

A. To take care of the front.

Q. Does he work on the same spot that you do?

A. And I check——

Q. Just a minute, please. Just listen to the question. There is no hurry about it; just take your time, and just answer the question the way I ask it. Will you, please? A. Yes.

(Testimony of Charles C. Spillers.)

Q. Do you both work on the same spot? [627]

A. The boy does, and me, yes.

Q. Does he work for you?

A. Only it is across in front of the building on the other side.

Q. He works across the street?

A. Yes; on the other side, in front of the building.

Q. Does he work there for you?

A. He works and sells papers for himself, but I give him papers.

Q. Do you know whether the early editions of the morning papers are received at that spot at night time? A. The Heralds?

Q. No, the early edition of the morning papers.

A. There is no hustler there. They put them in the rack.

Q. They put them in the rack?

A. Yes, they do.

Mr. Mouritsen: Could we have the papers specified.

Mr. Compton: The Times and Examiner.

A. They put them in the rack. At night they have a man [628] there hustling for them, but in the morning they put them in the rack.

Q. How do those racks operate? Do they leave the money in the slot?

A. Yes, they put them in a slot.

Q. With these five or ten papers that you eat, do you ever leave them there so they will be sold?

A. Oh, yes. I leave them there. That is, I leave

(Testimony of Charles C. Spillers.)

there what they can sell of them every night. I usually have some left.

Trial Examiner Kennedy: Do you ever get any returns for those, for the ones you leave there?

The Witness: Well, yes, I leave them there with the man that works over there—and he pays me for—he only sells about four or five, you know, all together, and I only pay for those what I have left. If it is 10, I eat that, and if is 7 or 8, they take them. At the present time it is a little better than it was. I don't leave them all together, but he takes them and splits them with me.

Cross-Examination

Q. (By Mr. L. B. Binford): Mr. Spillers, are you quite certain—I am not trying to confuse you— [629]

A. Yes, I know.

Q. ——but I want to be sure what you are talking about. Was that district man's name Harry Reynolds, or Harry Maxwell?

A. Maxwell is what it was, yes.

Q. The district man for the News?

A. Yes, Maxwell.

Q. Now, you are quite certain it is Maxwell?

A. Yes. It sounds familiar to me. I wouldn't be positive, but Harry Maxwell is what it is.

Q. Does that sound more familiar to you than Reynolds?

A. Yes. That's right. I am sorry that I made the mistake.

(Testimony of Charles C. Spillers.)

Q. That is all right. Do you get full returns on the news?

A. Oh, yes, I do; I get full returns.

Q. About how many copies of the News do you sell out there each day on the average?

A. Well, it runs about—all the way from 60 to 70; something like that.

Q. 60 or 70? A. Yes.

Q. How many boys, Mr. Spillers, do you work with out there?

A. You mean Heralds and News—Heralds—all together?

Q. How many newsboys?

A. Let's see. We have two—there is four of us altogether.

Q. Four of you altogether?

A. Yes, sir. Three Heralds. One works at the back of the [630] building, one Thrifty's and myself and the boy that works in front of Thrifty's.

Q. And you do not allow any of those boys to sell copies of the News?

A. Oh, yes. They handle the News, but they get them in racks. They have racks.

Q. Who puts them in the racks?

A. I put them in the racks myself.

Q. Then you do distribute them around so they can get them? A. Yes.

Q. You put them in the racks or give them to the boys? A. Yes.

Q. They all handle the News?

(Testimony of Charles C. Spillers.)

A. Yes. Yes, in a general sense, and in another way not.

Q. What do you mean by that?

A. Well, I have charge of them myself. I turn them over to them.

Q. You collect from the boys for the News, don't you? A. Well, it is all mine, but——

Q. I didn't ask you whose it is. You collect the money from the boys for the News?

A. Yes. I take it out of the racks.

Q. What other papers do you sell?

A. Herald and News.

Q. What other magazines do you sell? [631]

A. I don't handle any magazines.

Q. Do you handle the People's World?

A. It is in the rack up there.

Q. Don't you collect the money for it?

A. I take it and collect the money for it, but I don't hustle the paper at all.

Q. I didn't ask you if you hustled it, but I asked you if you handled it. Do you know the difference between hustling and handling?

A. Yes. I take the money for it.

Q. Do you make a profit on it?

A. We sell about four papers a day.

Q. Do you make a profit from the papers you sell? A. Two cents.

Q. Who delivers those to you?

A. I don't know what the man's name is that brings them out there. I am not familiar with it at all.

(Testimony of Charles C. Spillers.)

Q. How many does he deliver there?

A. About seven?

Q. About seven?

A. Seven. From two to four every day.

Q. And do you handle any other newspaper?

A. No.

Q. Are you sure? A. Sure. [632]

Q. You do not handle any other kind of magazine or other publication?

A. No, sir, I don't.

Q. Do you handle the Racing World, or charts or anything of that kind?

A. No, sir, I don't.

Q. How long have you been working at this particular corner?

A. About six or seven months.

Q. Prior to the time that you went to work there you had had, you say, about one month's experience in selling papers?

A. Well, I had worked for a while down at Sixth and Broadway, worked at the News there, worked there two years.

Q. Selling the News? A. Yes.

Q. Exclusively? A. Yes. Sure.

Q. When you were working at this one month when you were selling the Herald and Express in 1937—you think it was the summer?

A. I believe that's it.

Q. Did you sell the News then?

A. Yes, I had the News then, too.

(Testimony of Charles C. Spillers.)

Q. You sold the News too, at that time?

A. Yes.

Q. Where were you working? [633]

A. Slauson and Figueroa.

Q. And you sold the Herald and Express and News? A. Yes, sir.

Q. What News did you sell? Morning or evening? A. The Evening News.

Q. Did you sell the Morning News?

A. No, sir.

Q. Just the Evening News?

A. Evening News.

Q. Do you get a check from the Stockholders Publishing Company? A. That is the News?

Q. That is the News. A. Yes.

Q. How much do you get?

A. I get 98 cents.

Q. You get 98 cents. And you handle the papers through these three boys?

A. Yes, sir.

Redirect Examination

Q. (By Mr. Mouritsen): Mr. Spillers, I believe you testified [634] that these News—the copies of the News on that corner are left in racks; is that correct?

A. Well, they are left in racks. I take care of the racks and the boys handle them through the racks.

Q. Well, do you receive a certain——

A. Yes, sir.

(Testimony of Charles C. Spillers.)

Q. You have copies of the News?

A. Yes.

Q. And does the district manager put these copies in the racks?

A. No. He gives them to me and I put them in the racks.

Q. What do you mean that you collect the money out of the racks? How——

A. I have to put them under lock and key. If I didn't they would steal them all out of it.

Q. How do these other boys operate with respect to those racks?

A. Well, at a certain time, by giving a key to the rack, one has a key to the rack and he has got the drug store—he keeps it at the drug store, and he takes it out himself. He's got the key to the rack up there.

Q. Well, do you count out the papers that are placed in the racks? A. Yes.

Q. And how long have you been doing that? [635]

A. Well, about five months, I guess, something like that.

Q. You started handling the News about a month or so after you started handling the Evening Herald and Express? A. Yes.

Q. Ever since you started handling the News have you operated as I have described?

A. Yes, the same way.

Q. Now, how long, Mr. Spillers, have you received this check for 98 cents from the News?

(Testimony of Charles C. Spillers.)

A. Well, about five weeks ago it started; something like five weeks ago; somewhere in there.

Q. And at the time when you started to receive the check, did you change your method of operation with reference to the handling of the News in any way?

A. Well, no, just about the same thing.

Q. Prior to the time when you started receiving a check, did you ever have any conversation with the News District Manager about a check?

A. No, I never asked him nothing about it until I got started working and I seen the rest of them were getting it, and I said, "How come I didn't get one?"

Q. With whom did you talk concerning that?

A. I went to my boss alone, I went to Harry, my boss, for the News.

Q. And about when did you talk with him about receiving [636] a check?

A. Well, just about a week or two before I got it.

Q. And where did the conversation take place?

A. Right there in front of the building, in the car; he was sitting in the car, and I asked him about it.

Q. Was anyone else there other than you and Mr. Harry? A. No.

Q. Will you please tell us what you said to Mr.—to the News district manager and what he said to you?

(Testimony of Charles C. Spillers.)

A. I just asked him, I said, "Harry, how come that I can't get a bonus?" I said, "The rest of them get out here." I said, "How come I can't get some?" I said, "The Herald pays a bonus and I am entitled to one from the News." And he said he would see what he could do about it, and some way, I don't know how he got it, but he went down to the office and I got it.

Q. You have been receiving a check since that time every week? A. That is right.

Recross Examination

Q. (By Mr. L. B. Binford): After you place the papers in the rack in different locations, the school boys come along later and get them?

A. They steal a lot of them. [637]

Q. Do they take them out of the racks and handle them?

A. Yes, they take them out and read them and put them back.

Q. I mean the boys that handle the papers, do they carry the papers under their arms and try to sell them?

A. Some of them do and some just leave them in the rack.

Q. Some of them put them under their arms and try to sell them? A. Yes.

Q. They have the privilege, do they not, of taking them and hustling them if they want to?

A. Yes.

(Testimony of Charles C. Spillers.)

Q. Are you a member of the Newsboys Union No. 75? A. That is right.

Q. When did you become a member?

A. About a month and a half or two months ago.

Trial Examiner Kennedy: Do you have a social security card?

The Witness: Yes, I do.

Trial Examiner Kennedy: Who is listed, if you know, as the employer with the Social Security Board?

The Witness: I don't know who it was, but I showed them my Social Security. [638]

Trial Examiner Kennedy: You don't know who is listed as employer?

The Witness: No.

Mr. Cosgrove: Mr. Mouritsen, this testimony of the witness Charles Spiller has no application to the Times case, has it?

Mr. Mouritsen: No; that may be so stipulated.

Mr. Hall: Will you make the same stipulation, that this evidence that has just come in from the witness Charles Spiller is not applicable to the Los Angeles Examiner?

Mr. Mouritsen: Yes, that may be so stipulated.

SAM KAHN,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, testified as follows:

(Testimony of Sam Kahn.)

Trial Examiner Kennedy: Your full name?

The Witness: Sam Kahn.

Direct Examination

Q. (By Mr. Mouritsen): Where do you live, Sam? A. 1260 Georgia.

Q. That is in the City of Los Angeles? [639]

A. Yes, sir.

Q. Do you handle the Evening Herald and Express at the present time? A. Yes, sir.

Q. And the News? A. Yes, sir.

Q. And where do you handle them?

A. Florence and Broadway.

Q. How long have you been on that spot?

A. Oh, I should say about two years or a little over two years.

Q. And who is your district manager for the Evening Herald and Express?

A. Harry Plotkin.

Q. Has he been your district manager during the entire period while you have been on this spot?

A. Yes.

Q. And who is your News district man?

A. Harry Maxwell.

Q. And has he been your district manager during this time while you have been on this spot?

A. Yes, sir.

Q. Has Mr. Plotkin ever said anything to you regarding the hours that you are to be on the spot? [640]

(Testimony of Sam Kahn.)

Trial Examiner Kennedy: Answer that yes or no. A. Yes.

Q. (By Mr. Mouritsen): And when did he say anything to you about that?

A. Well, he said that when I first went to work.

Q. And where did he say that to you? Where were you when you talked with him about that?

A. Well, that is when I was first hired down at the branch office at 5414 Figueroa.

Q. And when you had your conversation with Mr. Plotkin, was anyone else present other than you and Mr. Plotkin?

A. Well, I don't remember.

Q. Will you tell us what Mr. Plotkin said to you and what you said to Mr. Plotkin?

A. Well, when I first was hired, I was told to be on the [641] corner at the time the Green Flashes arrived. They probably arrive at 9:45 or 10:00, or probably a little later, and I was ordered to stay there until 8:00 o'clock, 8:00 p. m. in the evening.

Q. Is that what Harry Plotkin said to you?

A. Yes, sir.

Trial Examiner Kennedy: Well, did you relate everything that Mr. Plotkin said to you on that occasion?

The Witness: Well, I have just answered—yes, that is all. I just took the orders—worked the hours he told me.

Trial Examiner Kennedy: I asked if you have told us everything he said to you.

(Testimony of Sam Kahn.)

The Witness: Yes.

Trial Examiner Kennedy: That is right, is it?

The Witness: Yes

Trial Examiner Kennedy: Now tell us everything you said to him at that time.

The Witness: Well, that is all I could say, I told him I would obey the orders. That is all I said. [642]

Trial Examiner Kennedy: How long ago was that conversation?

The Witness: The first day I was hired.

Trial Examiner Kennedy: How long ago is that?

The Witness: Oh, about—as far as I can recall, either around October or November of 1938.

Trial Examiner Kennedy: Do you remember the exact words that Mr. Plotkin used on that occasion?

The Witness: Well, as far as I can remember, he said that my hours were from 10:00 in the morning until 8:00 in the evening. I know I have to stay there until 8:00 o'clock, no later.

Trial Examiner Kennedy: Are those the exact words he used?

The Witness: Well, I don't remember whether they are the exact words, but I know that he told me to stay there until 8:00 o'clock.

Trial Examiner Kennedy: That is the substance of the conversation? You can't give us the exact words. Well, now, [643] what about this being ordered to be there at a certain time. Did he say, "I order you," or did he use the word "order"?

(Testimony of Sam Kahn.)

The Witness: No. Here is the idea: I live right next door to the Herald office and I ride down in the truck with the first edition, the Green Flash, the first edition that comes out, and I go right to the branch office and from there I go right to my corner.

Trial Examiner Kennedy: I asked you did he use the word "order," did he order you to be there at a certain time?

The Witness: No, sir, he didn't.

Trial Examiner Kennedy: Then why did you use that word "order"?

The Witness: Well, I say, the orders I got from him was to be on the corner when the Green Flash come out.

Trial Examiner Kennedy: With that explanation I will allow the entire testimony to remain in the record.

Q. (By Mr. Mouritsen): Now, at that spot, Mr. Kahn, do you count out the papers to other newsboys? A. Yes, sir.

Q. Do you do that with copies of the Evening Herald and Express? A. Yes, sir.

Q. And with the News? A. Yes, sir.

Q. How many boys do you count out the papers to? [644] A. Three boys.

Q. And do you receive a check from the Evening Herald and Express? A. Yes, sir.

Q. From the News? A. Yes, sir.

Q. Now, since you started to handle the papers

(Testimony of Sam Kahn.)

on that spot, Mr. Kahn, have you ever been removed from that spot by the district manager?

A. Yes, sir.

Q. Which one? A. By Harry Plotkin.

Q. And about when did that occur?

A. Well, to my knowledge—it occurred twice. If I remember right, it was during the month of April, 1939, and I think around the latter part of August of 1939.

Q. Now, on the first occasion did you have a conversation with Mr. Plotkin before he removed you from the corner? A. Well, he——

Q. Just answer that yes or no. Did you talk with him about it? A. Yes, sir.

Q. Where did you have that talk with him?

A. On the corner of Florence and Broadway.

Q. And was anyone present other than you and Mr. Plotkin? [645] A. No, sir.

Q. What did he say to you and what did you say to him?

A. Well, he said I was laid off for two or three days, and I asked him why, and he said, "Because you weren't on your corner."

Q. Did you say anything further?

A. Well, I told him, I says, "What is the idea of the layoff?" If I remember right, I told him I had to go to the toilet, and when I told him that, well, he says he wasn't doing it, he says, "Bill Abels come by, the checker come by and told me to lay

(Testimony of Sam Kahn.)

you off because you weren't on your corner, you wasn't hustling."

Q. And was that about all of the conversation, or the talk that you had with him at that time?

A. Yes, sir.

Q. And after that time were you removed from the corner for two or three days?

A. Yes, sir.

Q. Now, this other time in, I believe you stated, August, 1939—— A. Around August.

Q. ——did you have a conversation with—did you have a talk with Mr. Plotkin at that time before he took you off the corner?

A. Well, he—— [646]

Q. That can be answered yes or no. Did you have a talk with Mr. Plotkin? A. Yes.

Q. Where did that talk occur?

A. At Florence and Broadway, at the corner.

Q. And other than yourself and Mr. Plotkin, was anyone else present? A. No, sir.

Q. Will you state what Mr. Plotkin said to you and what you said to him?

A. Well, he told me that—the thing was this: I had about 30 or 40 papers left, and I didn't have enough money to pay for them. Well, Mr. Plotkin said that I either had to pay for them or I couldn't go to work, and I come down the next morning and——

Q. Well, now, let's get this straight. Was that about all the conversation you had with him at that time? A. Yes, sir.

(Testimony of Sam Kahn.)

Q. Now, tell us what happened after that time with reference to your being removed from the corner?

A. Well, I got down to the corner and I found somebody else on my spot, and I went to Mr. Plotkin and I told him, I says, "What is the idea"——

Q. Did you have a talk with him?

A. After that. [647]

Q. Now, where did you have this talk with him?

A. That was at the branch office on Figueroa.

Q. Was anyone else present other than you and Mr. Plotkin?

A. Well, there was Bill Abel and Mr. Gratz.

Q. Is that Jake Gratz? A. Jake Gratz.

Q. State what you said to Mr. Plotkin and what he said to you.

A. I told him I just didn't have enough money to pay for the—to pay for the papers, and then Bill Abel told me, well, he says, "You can't go to work until you pay for those papers, until you pay up." And I was laid off for three or four days, and I want to say this, that I was put back to work and was reimbursed for the few days that I lost, by Mr. Gratz.

Q. Jake Gratz? A. Yes, sir.

Q. Has the district manager for the Evening Herald and Express furnished you any box out there? A. I didn't get that.

Q. Herald box. Did he furnish you a box?

A. Yes, sir.

(Testimony of Sam Kahn.)

Q. And from time to time does he give you advertising placards? A. Yes, sir.

Q. Has he from time to time given you any instruction with [648] reference to such advertising placards?

A. Well, he has told me to place them on the boxes, and around the post, all over the corners.

Q. When he has told you to do that have you done it? A. Yes, sir.

Q. Do you have any News racks there?

A. Yes, sir.

Q. Are those your racks? Do they belong to you?

A. No; they belong to the Daily News.

Q. From time to time has the News district manager furnished you advertising placards?

A. Yes, sir.

Q. Has he given you any instructions regarding those placards?

A. Just to tell me to have—to put them in the racks.

Q. And when he has said that to you have you put those placards in the racks? A. Yes, sir.

Q. Mr. Kahn, at the present time are you permitted to return all unsold copies of the Evening Herald and Express?

A. Well, I am permitted to return all but three —three or four—well, I will say five at the most.

Q. And approximately when was the number of three or five at the most fixed?

A. Why, if I return, say, ten sheets I would get

(Testimony of Sam Kahn.)

credit for seven, and if I returned anywhere from 20 to 25 or 30 I [649] would probably get credit for—well, we will say if I returned 25 I would get credit for 21.

Q. And who determined whether or not you received any credit at all?

A. As far as I know it is Bill Abels.

Q. Do you sell any magazines on your spot?

A. No, sir.

Q. Are you a member of the Newsboys Union?

A. Yes, sir.

Q. Have you held any office in that Union?

A. I am on the Executive Board of the Newsboys.

Cross Examination

Q. (By Mr. Compton): You say you are furnished a box by the Evening Herald and Express to put your papers on? A. Yes, sir.

Q. Do you have any objections to using the box? [650] A. No.

Q. (By Mr. Compton): It is a convenience to you, isn't it?

A. Yes, it is. I will admit that.

Q. (By Mr. Compton): Keeps your papers up off the street and out of the dirt and filth from the street, doesn't it? A. Yes, sir.

Q. Does the district manager give you a change apron? A. No, I don't get any. [651]

Q. If you wanted a change apron you would ask him for it?

(Testimony of Sam Kahn.)

A. Oh, yes. If I had any use for it I would. I carry a changer.

Q. A money changer instead of a change apron?

A. Yes, sir.

Q. Was the box on your corner ever stolen from the corner? Did it ever disappear?

A. Oh, yes. One or two.

Q. What do you do in that case?

A. Well, I just——

Q. What?

A. I just ask Jake Gratz for another box.

Q. In other words, you want another box and you ask him for it, don't you? A. Yes, sir.

Q. You never pay him anything for any of those boxes, do you? A. No, sir.

Q. Mr. Kahn, were you recently arrested for bookmaking on that corner?

A. Do I have to answer that? [652]

Q. (By Mr. Compton): Do you know what a felony is? A. Yes, sir.

Q. Were you ever convicted of a felony?

A. No. I was never convicted, no.

Q. (By Mr. Compton): Mr. Kahn, did you ever take bets on that corner? [653]

Mr. Mouritsen: Wait a minute. That is objected to as incompetent, irrelevant and immaterial.

Mr. Compton: It is another business activity, if the Examiner please, rather quite independent from the business of selling newspapers.

Trial Examiner Kennedy: Yes. I will allow you to go into that.

(Testimony of Sam Kahn.)

Mr. Mouritsen: Just a minute. I will instruct the witness, then, that he is to claim his immunity before he answers the question. [654]

Mr. Mouritsen: Well, Mr. Examiner, I would suggest to the witness that he refuse to answer the question upon the ground that he may incriminate or degrade himself. I know of no such formula, but I think he should refuse upon that ground. If the Trial Examiner then orders him to testify it should be specified by the Trial Examiner that such testimony is only for the purposes of this particular hearing. [655]

Trial Examiner Kennedy: Now there has been an objection made to the question. I have ruled that the question is proper. I direct you to answer the question.

Mr. Mouritsen: Now, in order that the witness may be entirely protected, Mr. Examiner, could he be instructed [656] first to claim the privilege that is afforded him under the statute, under the section that you have just read?

Trial Examiner Kennedy: Do you desire to claim your privilege for immunity—let's see what the wording is here—"after having claimed his privilege against self incrimination." Do you desire to claim your privilege against self incrimination?

The Witness: Yes, sir.

Trial Examiner Kennedy: In relation to this question that has been put to you?

(Testimony of Sam Kahn.)

The Witness: Yes, sir.

Trial Examiner Kennedy: Under the statute that I have read to you?

The Witness: Yes, sir.

Trial Examiner Kennedy: Very well.

Mr. Mouritsen: Could that be with respect to this question and any questions of similar purport?

Trial Examiner Kennedy: Do you understand that, that you are claiming your privilege under the statute as to this question or any questions of similar import that may be put to you?

The Witness: Yes, sir.

Trial Examiner Kennedy: Very well. Now, go ahead and answer the question.

Mr. Compton: May I ask the witness if he understands [657] that he may truthfully speak without danger of being prosecuted for anything that he reveals?

Trial Examiner Kennedy: Do you understand that?

The Witness: Yes, sir.

Trial Examiner Kennedy: Now, read the question.

(The question referred to was read by the reporter as set forth above.)

A. Yes, Sir.

Q. (By Mr. Compton): You did?

A. Yes, sir.

Q. (By Mr. Compton): Was that during the hours at which you were also on the corner selling papers? A. Yes, sir.

(Testimony of Sam Kahn.)

Cross Examination

Q. (Mr. L. B. Binford): Do you sell the People's World?

A. Well, a fellow comes around and leaves them on the box.

Q. Do you make a profit on them if they are sold? A. Well, yes.

Q. You say that you are furnished with a rack by the News? [658]

A. Furnished by the Daily News, yes, sir.

Q. Do you pay anything for that?

A. No, sir.

Q. Do you have any objection to using it at all?

A. Not at all.

Q. Does it help you sell your papers?

A. Yes, sir.

Q. Do you sell any other paper besides the News, the Herald and Express and the People's World?

A. No, sir.

Q. None whatever? A. No, sir.

Q. And do you sell all editions of the News or just from the fifth star on?

A. From the fifth star on to the tenth.

Q. You don't sell the morning editions?

A. No, sir.

Q. Now, you are also furnished with occasional placards by the News? A. Yes, sir.

Q. And do those placards contain advertising matter? A. Yes, sir.

Q. Respecting the News? A. Yes.

Q. And the features in the News? [659]

(Testimony of Sam Kahn.)

Q. Do they help you sell your paper?

A. Yes, it does.

Q. Do you pay anything for them?

A. No, sir.

Q. Any objection to your using them?

A. Not at all.

Redirect Examination

Q. (By Mr. Mouritsen): On this spot which you occupy, do you sometimes operate in the safety zone there? A. Yes, sir.

Q. Did you ever have any conversation with Mr. Plotkin regarding your operating in the safety zone? A. Yes, sir.

Q. About when did you have the first conversation with him regarding your operating in the safety zone?

A. The first one I had was when he first hired me. He says "Always play that safety zone."

Q. Well, let's fix the place, if we can, where this conversation took place.

A. Well, in fact, it takes place every day. He tells me to play that safety zone and get out in the traffic. [660]

Q. Well, what do you understand by his use of the term about playing the safety zone?

A. Just get out there and hustle those sheets in the safety zone, and now you take Florence Avenue on the north side of the street during the racing season, I will say Hollywood, he wants me to get out on the white line and hustle those sheets—it

(Testimony of Sam Kahn.)

isn't a safety zone. It is right in the street on the white line.

Q. On the white traffic lines?

A. On the white traffic lines.

Q. And has he so instructed you to do that?

A. Yes, sir.

Cross Examination

Q. (By Mr. Hamblin): Do you play the safety zone, as you call it, all the year round or during the racing season only? A. All year round.

Q. Do you find that it does increase the number of papers that you sell?

A. Well, it doesn't increase. I sell more papers by standing on the corner than I would in that safety zone.

Q. Do you personally always take the safety zone?

A. Yes. That is the main spot.

Q. Now, do you put in every day to your district man a standing order for papers? [661]

A. No, sir. I——

Mr. Mouritsen: Just a minute. I will object to this witness making any voluntary statement. He has answered the question.

Q. (By Mr. Hamblin): Well, will you explain then how you buy the papers that you obtain, that is, the Herald and Express?

A. It isn't that I buy it. I have got to take what they give me.

Q. You mean that you don't indicate in any respect how many papers you want from day to day?

(Testimony of Sam Kahn.)

A. No, sir. Well, sometimes if the papers are going good I will ask for an increase, but I get an increase at times regardless of whether they are going good or not, especially during this time, during the war crisis.

Q. Well, prior to the war crisis, didn't you tell your district man from time to time how many papers you wanted? A. No, sir.

Q. You mean you have nothing to do with the number of papers that are delivered to you?

A. No, sir. [662]

Q. Do you supply papers to other boys on that corner? A. Yes, sir.

Q. Do you supply any particular number on any given day to them?

A. Well, not exactly. I just know how many they sell and I give them that many.

Q. Do they tell you how many they want?

A. No, sir.

Q. You give them the number that from past experience you know they can sell, is that it?

A. Yes, sir.

Q. And you endeavor to sell the rest yourself? [663]

A. Sometimes I do and sometimes I don't. I get stuck about 75 per cent of the time.

Q. But you return all but three to five?

A. Yes, sir.

Q. Of those that you don't sell?

A. Yes, sir.

Q. And you are charged for the papers you re-

(Testimony of Sam Kahn.)

ceive from Mr. Plotkin at the rate of 3 cents a paper at the outset, I presume, aren't you?

A. Yes, sir.

Q. And then you pay him the amount of cash that you have collected from the sale of your papers and the amount of cash that you have collected from the other boys in connection with the sale of their papers; is that it? A. Yes, sir.

Q. And at the same time you turn in the proceeds you turn back all but three to five of the unsold papers; is that it?

A. I turn them all back.

Q. Well, when do you pay for the papers that you have sold?

A. Well, I pay for the papers that I sell and I pay for the papers that are unsold, too. I pay that every night. He gets around about 7:00 o'clock. I pay for the whole amount I take out regardless of whether they are sold or not.

Q. You pay at about 7:00 o'clock each night, is that it? A. Yes. [664]

Q. Well, I understood you to testify that you eat only three to five papers every day, is that right? A. Yes, sir.

Q. Well, now, after you have paid at 7:00 o'clock for all the papers, how is the arrangement made whereby you eat only three to five?

A. Well, he comes back the next night or—well, if I return them today, return 26 papers today from the night before, I would get paid tonight for them. If I returned 25 I would expect credit for about

(Testimony of Sam Kahn.)

say, 21, and he would give me that when I would check in the day's receipts.

Q. Well, the effect of this arrangement that you have just described is that you paid for 3 to 5 unsold papers but no more? A. That is right.

Redirect Examination

Q. (By Mr. Mouritsen): In other words, is this correct, Mr. Kahn, that at 7:00 o'clock at night when Mr. Plotkin comes around you pay him for all copies of the paper you have received during the day up until seven o'clock, and also the papers that he leaves you at seven o'clock; is that correct?

A. Well, I pay for the papers—there are six editions [665] that I pay for, from the Green Flash to the 7 star final, and if he leaves me—if my draw is 150 papers, I would get that during the day at certain times, and when Mr. Plotkin gets around I pay him for 150 papers, regardless of whether I have got them all on the corner or not. I pay for them, and then these returns I have when he gets around next day at 1:15, I return to him, and then he gets around that night and gives me credit for them.

Mr. Crosgrove: It is stipulated that the testimony of Sam Kahn is not intended to apply to the Los Angeles Times, at this time?

Mr. Mouritsen: That's correct.

Mr. Hall: It is also stipulated that it does not apply to the Los Angeles Examiner?

Mr. Mouritsen: That is correct. Mr. Examiner,

(Testimony of Sam Kahn.)

in support of its claim to represent these newsboys, the Newsboys Union is prepared at this time to offer 171 authorization [666] cards designating the Los Angeles Newsboys Union as the bargaining agent of these men, and is prepared to furnish those for the Trial Examiner's inspection.

Trial Examiner Kennedy: Very well. I understand that in the Trial Examiner making such inspection and making a report thereof for the record, it would generally require a check of the signatures to see whether or not they appear to represent names on the pay roll. Do you have any such thing as a pay roll in evidence?

Mr. Mouritsen: Board's Exhibit 3, Mr. Examiner.

Mr. Mouritsen: This is to be introduced for the purpose of indicating to the Board that this Union has been designated as the bargaining agent of the men the Union claims to represent.

Mr. Hall: May I ask this, further, Mr. Examiner: Do any [667] of these cards purport to state, or purport to contain a statement by any individual that that individual sells the papers of any particular organization?

Mr. Mouritsen: Of the Herald and Express.

Mr. Hall: Of the Herald and Express?

Mr. Mouritsen: Of the Los Angeles Evening Herald and Express at this time. And most of them also refer to the News; but they are offered at this time merely to indicate the designation of the newsboys who sell the Evening Herald and

(Testimony of Sam Kahn.)

Mr. Cosgrove: I gathered from the statement of Mr. Mouritsen that they had no application to the Los Angeles Times because Mr. Mouritsen in response to an inquiry of the Examiner said that the Examiner might check the authorization cards with the payroll which is marked Exhibit No. 3, which is a roster of the Herald and Express wholesalers and hustlers.

Mr. Mouritsen: That is correct.

Mr. Cosgrove: It would not have any application to the Los Angeles Times?

Mr. Mouritsen: No. [668]

Mr. Compton: If the Examiner please, may I ask, these cards are submitted to you for your examination, and upon that as a part of your report you find in effect that you have checked the names of the persons, determining that they probably resemble or are the names of persons on the payroll [669] of the Evening Herald and Express, you determine then that a majority of those persons have designated the Newsboys Union as its bargaining agent?

Trial Examiner Kennedy: No. What is required is that the regional director before the hearing, or if he has not done so before the hearing, the Trial Examiner at the hearing, if cards such as these, which read as follows—I want this in the record—"Card of Authorization. Date blank, 40. I hereby designate and select the Newsboys L. I. Union No. 75 C. I. O. to represent me for purposes of collective bargaining and with respect to rates

(Testimony of Sam Kahn.)

of pay, wages, commissions, bonuses, hours of employment and other conditions of employment. Blank signature. Blank address." And under the signature and address, "I sell papers for: blank." In which the Board would have to hold it states "Herald and Express and News, corner Venice and Vermont. I understand that the above information is to be used in connection with Labor Board cases."

Now, after having examined the cards offered for that purpose, it is the Trial Examiner's duty to compare the names that appear on those cards with any payroll to ascertain whether or not there is an apparent similarity in names on the cards and on the payroll. And he is then to report how many cards bearing names that appear to be on the payroll, and that is all. [670]

Trial Examiner Kennedy: The hearing will be in session. I have checked the number of cards heretofore described by me that has been handed to me by the attorney for the Board against a payroll or a list of alleged employees, Board's Exhibit No. 3, and I find that there are a total of 171 cards, 123 of which appear to have the signatures of persons found on Board's Exhibit 3. I will hand back the cards to counsel.

Trial Examiner Kennedy: I want to ask you a question about putting in evidence the records of the Social Security Board as to these people, as to who, if anyone, is registered as the employer.

Mr. Mouritsen: Well, I think there is no contest as to that. As I understand it, there is no con-

(Testimony of Sam Kahn.)

test as to that, and I think it may be stipulated that with reference to the [672] checks that these wholesalers or check men received, the company pays Social Security on such checks. Is that correct, Mr. Compton?

Mr. Compton: That is correct. [673]

DAVEY BELL,

called as a witness by and on behalf of the Evening Herald and Express, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Compton): You have stated your occupation to be what?

A. Superintendent street sales.

Q. Of the Los Angeles Evening Herald and Express?

A. Of the Evening Herald and Express. [678]

Q. Mr. Bell, I am going to read you the testimony of one Harry Relis who testified on Wednesday, June 12, 1940, which testimony appears in Volume 3, Page 328:

"Q. By Mr. Mouritsen: Now, Mr. Relis, will you state the conversation that you had with David Bell, and if you will state only what he said to you and what you said to him at that time?

"A. He told me that I should have to get rid of my corner and in the meanwhile to put somebody

(Testimony of Davey Bell.)

to stay on my corner until I get somebody to sell it and get rid of it, but I will have to move. I am not, in other words, a suitable man to sell papers there. That was the conversation."

Mr. Bell, do you recall having any such conversation with Harry Relis? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. And you told Mr. Relis that you had complaints? A. Yes, sir.

Q. And were those complaints oral or written complaints? A. Written.

Mr. Compton: Will you mark this for identification? I will hand you a letter on the letterhead of Downtown Business [681] Men's Association, dated December 21, 1934, addressed to Mr. David Bell, manager, street circulation, and signed, apparently, "Daine Sturgis," and ask you to state if you can identify that letter. A. Yes, sir.

Q. Did you receive that letter?

A. Yes, sir.

Q. In the ordinary course of mail?

A. Yes, sir.

Mr. Compton: I offer this letter at this time as Los Angeles Evening Herald and Express Exhibit next in order. I don't know what the number is.

Trial Examiner Kennedy: Any objection?

Mr. Mouritsen: Mr. Examiner, I submit that it is immaterial. In other words, I assume that it purports to explain why Mr. Bell removed Mr. Relis from the corner. I submit that is immaterial. It

(Testimony of Davey Bell.)

is the exercise of the control that is important, not the reasons therefor.

Trial Examiner Kennedy: Objection overruled. Received.

Mr. Cosgrove: May I inquire the number.

The Reporter: Herald's Exhibit No. 2.

(Thereupon the document referred to was received in evidence and marked Herald and Express Exhibit No. 2.) [Exhibit No. 2 is set out at page 483 of this printed record.] [682]

Saturday, June 15, 1940. [685]

Met, pursuant to adjournment, at 9:30 o'clock a. m.

Direct Examination
(Resumed)

Q. (By Mr. Compton): Mr. Bell, do you recall about what time that conversation took place with Mr. Relis; that is, was it about the time that Mr. Relis testified that it occurred?

A. About what?

Q. Was it about the time Mr. Relis testified that it did occur? A. Yes.

Q. Now will you state where the conversation took place?

A. At the Herald—in my office at the Herald. [688]

Q. Who was present?

A. I just can't recall whether there was anybody. There might have been several fellows there at the time.

(Testimony of Davey Bell.)

Q. Well, you were there? A. Yes, sir.

Q. And Mr. Relis was there? A. Yes, sir.

Q. Now, what did you say to Mr. Relis and what did he say to you?

A. Well, I told him that he had bought the rights to sell papers there on that corner; he would have to get along with the business people and everybody or otherwise all the newsboys would be removed from their corners. He wanted to know who made the complaint. I told him that I had received a letter from Daine Sturgis that represents the Downtown Business Men's Association, that he would have to go up there and see him and he could tell him who the people were from the Rowan Building that protested, and if he straightened out his matters with him that it would be satisfactory to me.

Q. (By Mr. Compton): Mr. Bell, I hand you a letter on the [689] letterhead of Downtown Business Men's Association, Los Angeles, dated January 3rd, 1935, addressed to David Bell, Street Circulation Manager, and signed "Dean Sturgis," and ask you if that is the letter you have just testified you received from Mr. Sturgis.

A. Yes, sir.

Trial Examiner Kennedy: May we have that marked for identification?

Mr. Compton: It is marked Herald Exhibit No. 3 for identification.

Q. (By Mr. Compton): What was the answer, please? A. Yes, sir.

(Testimony of Davey Bell.)

Mr. Compton: At this time I offer as Herald's Exhibit No. 3 the letter just identified by Mr. Bell.

Trial Examiner Kennedy: Is there any objection?

Mr. Mouritsen: No objection.

(Thereupon the document referred to was received in evidence and marked Herald and Express Exhibit No. 3.) [690]

[Herald Exhibit No. 3 is set out at page 485.]

Q. (By Mr. Mouritsen): Mr. Bell, Mr. Relis was removed from his corner for a period of two or three days; is that correct? [691]

A. Yes, sir.

Q. And that was at your direction; is that correct? A. Yes, sir.

Q. Is the Evening Herald and Express a member of the Downtown Business Men's Association?

A. That is something I don't know, sir. I can't answer that; I don't know. [692]

ED BRYANT,

called as a witness by and on behalf of the Los Angeles Evening Herald and Express, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Compton): What is your address, Mr. Bryant? A. 243 South Olive.

Q. What is your present occupation, Mr. Bryant? A. Newsboy.

(Testimony of Ed Bryant.)

Q. (By Mr. Compton): Where do you sell papers? A. At First and Broadway. [693]

Q. What papers do you sell?

A. The Herald and Express and the Evening News.

Q. Do you sell any other newspapers?

A. A few that is left there by the morning men, such as the Examiner and Times and Daily News.

Q. And do you sell any magazines or periodicals?

A. The Saturday Evening Post, Liberty and Collier's.

Q. Mr. Bryant, how long have you been on the corner of First and Broadway?

A. Since June 1st, 1939.

Q. When did you acquire that corner, Mr. Bryant? A. On that date.

Q. On that date? A. Yes, sir.

Q. And from whom did you acquire the corner?

A. Sidney Faber and his father.

Q. Did you pay anything for the purchase of the corner? A. $600.00.

Q. Mr. Bryant, do you employ any assistants?

A. No.

Q. Had you sold newspapers prior to the acquisition of the corner at First and Broadway?

A. Yes, sir. [694]

Q. Where had you sold them?

A. Third and Broadway.

Q. Did you dispose of that corner?

A. Yes.

(Testimony of Ed Bryant.)

Q. To whom did you sell it?

A. Sidney Faber.

Q. What was the purchase price?

A. $250.00.

Cross Examination

Q. (By Mr. Mouritsen): Mr. Bryant, about how many copies of the Herald and Express do you sell a day? A. Personally?

Q. Personally. A. About 300.

Q. You do that and you operate on that corner six days a week? A. That is right.

Q. That would be approximately 1800 a week?

A. That is right.

Q. Approximately how many copies of the News do you sell on that corner a day?

A. About 100.

Q. That would be approximately 600 a week?

A. Yes, sir. [695]

Q. How many magazines in all do you sell?

A. In all it would be about 25.

Q. 25 a day or a week? A. A week.

Q. And, Mr. Bryant, you don't carry those magazines around in your arms as you do the Herald and Express, do you? A. No.

Q. And you also carry the News?

A. That is right.

Q. Do you carry those—do you carry the Herald and Express on the inside, with the headling pointing out, and the News folded on the outside of the Herald and Express with the headline also pointing out?

(Testimony of Ed Bryant.)

A. Whatever suits my convenience. If my arm is a little tired I don't carry any of them. Usually I stand with the Herald and Express in one hand and the Evening News in the other hand, both headlines showing.

Q. In other words, you are to give them an even break on display?

A. That is right, yes sir.

Q. Who was the district manager, or who was your district manager when you acquired this corner at First and Broadway?

A. A man known to me as Joe Woods.

Q. And did he say it was all right for you to handle papers on First and Broadway? [696]

A. That is right, yes, sir.

Q. Before you acquired that corner?

A. That is right.

Q. Sidney Faber was down on that corner before you were? Sidney Faber had been on that corner before you were? A. Yes, sir.

Q. Oh! I think you said you acquired the corner about June 1, 1939? A. That is right.

Q. Now, at the time when you acquired that corner you had a conversation with Joe Woods; is that right?

A. You mean before I negotiated, or after, for the corner?

Q. Well, you had such a conversation at some time? A. Yes.

Q. Where did that conversation take place?

(Testimony of Ed. Bryant.)

A. I believe it was at Third and Hill.

Q. And when did it take place?

A. It was on Saturday, about May the 24th or something; I [697] don't remember the exact date.

Q. Well, that is near enough. At least it was before you started to operate on First and Broadway. A. Yes.

Q. Who were present?

A. Myself and this Joe Woods and a person—a Mexican named Manuel—I don't remember his last name—who at that time owned the corner.

Q. You say, "Who at that time owned the corner." Didn't I understand you to state that you obtained it from Sid Faber? A. That's right.

Q. Who owned it at the time that you acquired it? Faber or—— A. Faber.

Q. Now, will you state what conversation you had with Joe Woods, what you said to him and what he said to you?

A. Well, there were several conversations altogether among different people. I merely asked Joe Woods if it was all right for whoever owned First and Broadway to sell it to me and for me to operate on the corner.

Q. And what did Woods say?

A. And he said, "Why certainly. You are as good a man as anyone to be there."

Q. Was that all the conversation?

A. That was all of that one.

(Testimony of Ed Bryant.)

Q. Well, were there other conversations after that time? [698]

A. No. That was the last one.

Q. Had there been conversations before that time?

A. Not pertaining to Sidney Faber.

Q. Pertaining to your acquiring the corner?

A. Yes.

Q. At First and Broadway? A. Yes.

Q. Where did you obtain the $600.00 for purchasing the corner?

A. From the bank.

Q. Didn't you, as a matter of fact, borrow that money from Joe Woods? A. I did not.

Q. Did you pay Joe Woods anything for that?

A. No.

Q. Operating on that spot? A. No.

Q. You are sure of that? A. Absolutely.

Q. At no time since then did you pay Joe Woods any money for operating on that spot?

A. No, sir.

Q. And you are sure of that? A. Yes, sir.

Q. Do you have a bank account, Mr. Bryant? [699] A. No, not myself.

Q. What do you mean by that—not yourself?

A. I have money in the bank in the name of Mrs. Mae Bryant, a relative of mine.

Q. Is that a checking account? A. Yes.

Q. What bank?

A. Farmers and Merchants at Fourth and Main. [700]

(Testimony of Ed Bryant.)

Q. And did you have this account at the Farmers and Merchants Bank at the time when you purchased this corner? A. Yes, sir.

Q. And at all times since that time?

A. That is right.

Q. That is the Farmers and Merchants Bank at Fourth and Main? A. Yes.

Redirect Examination

Q. (By Mr. Compton): By the way, Mr. Bryant, do you belong to any labor organization?

A. I belong to the Newsboys Union.

Q. Do you hold any office in that organization.

A. Treasurer.

Trial Examiner Kennedy: Anything further with this witness? Do you have a Social Security card?

The Witness: No, sir. [701]

Q. (By Mr. Mouritsen): Mr. Bryant, do you count out papers to other boys on that corner?

A. That is right.

Q. Do you check them in? A. Yes.

Q. You don't receive a check from the Evening Herald and Express? A. No, sir.

Q. Do you have other boys on that corner to whom you count out copies of the News?

A. That is right, yes, sir.

Q. And check them in? A. That is right.

Q. You don't receive a check from the News?

A. No, sir.

(Testimony of Ed Bryant.)

Q. Do you count out the papers to these other boys at the same price that you receive them from the Herald and Express? A. That is right.

Q. And the News? A. That is right.

Q. How many boys?

A. At present, due to the condition of the work around the corner there, there is only three.

Q. And at the present time do you receive full returns? A. Yes, sir. [702]

Trial Examiner Kennedy: Who do you work for, Mr. Bryant?

The Witness: Who do I work for?

Trial Examiner Kennedy: Yes.

The Witness: It seems to me like I work for myself. It is all commission.

Trial Examiner Kennedy: You are your own boss; is that your idea of it?

The Witness: Well, I couldn't exactly say that. I can't open my business when I like and can't close it when I like.

Trial Examiner Kennedy: You have to work specified hours; is that it?

The Witness: That is right.

Trial Examiner Kennedy: Who specifies those hours?

The Witness: Well, as a matter of fact, nobody ever has, but that has been my understanding ever since I have been selling papers, that the hours of the Herald and Express and the Evening News are from 9:00 in the morning until 7:00 in the evening.

(Testimony of Ed Bryant.)

Trial Examiner Kennedy: How did you get that understanding?

The Witness: Just from different newsboys and district men telling me that. [703]

Trial Examiner Kennedy: What district man ever told you that?

The Witness: Well, there was two or three of the Examiner told me the hours, and Joe Woods of the Herald told me what the hours were.

Trial Examiner Kennedy: That is all. Anything further?

Redirect Examination

Q. (By Mr. Compton): Mr. Bryant, isn't it a fact that what they told you was what time the editions came out, what time they hit the streets?

A. That is right.

Mr. Cosgrove: Will it be stipulated, Mr. Mouritsen that the testimony of Mr. Bryant is not intended by counsel for the Board as applying to the Times case?

Mr. Mouritsen: That will be so stipulated.

Mr. Hall: And the same stipulation for the Examiner?

Mr. Mouritsen: Yes.

WILLIE SCHULLMAN,

called as a witness by and on behalf of the Evening

(Testimony of Willie Schullman.)

Herald and Express, having been first duly sworn, testified as follows: [704]

Mr. Hall: Mr. Mouritsen; I desire to be relieved of that stipulation just made and would like the testimony of Ed Bryant to apply to the Los Angeles Examiner's case.

Mr. Mouritsen: I will relieve you from the stipulation, Mr. Hall.

Mr. Hall: Thank you, sir.

Trial Examiner Kennedy: Your full name, please?

The Witness: Willie Schullman.

Direct Examination

Q. (By Mr. Compton): Mr. Schullman, where do you reside? A. 1114 Longwood Avenue.

Q. What is your occupation?

A. Newsboys.

Q. Where do you vend newspapers?

A. Seventh and Spring.

Q. How long have you been on that corner?

A. Fifteen years.

Q. Did you buy the corner?

A. Yes, I did.

Q. From whom did you buy it?

A. Phil Levinson.

Q. How much did you pay for the corner?

A. Well, I couldn't say, but we made a deal where he would go to college and I gave him so much a week.

Q. For the corner? [705]

(Testimony of Willie Schullman.)

A. Yes, sir.

Q. Could you give an approximation of how much that corner actually cost you?

A. Well, if you would give me about two minutes to put it together, I will.

Mr. Compton: Very well. May we have a recess, your Honor, while the witness figures it out?

Trial Examiner Kennedy: We will take a short recess.

The Witness: Well, it wouldn't take that long.

Trial Examiner Kennedy: All right, go ahead.

A. I should say about twelve hundred.

Q. (By Mr. Compton) About $1200.00?

A. Yes, sir.

Q. Mr. Schullman, do you employ other boys to assist you? A. Yes, I do.

Q. Do you employ other boys to assist you, [706] Mr. Schullman? A. Yes, I do.

Q. How many? A. Well, five.

Q. How do you pay them?

A. Well, I pay them so much a week.

Q. Straight salary?

A. Well, just depending on what they sell.

Q. You purchase your newspapers for the corner? A. I do.

Q. And you pay for them? A. I do.

Q. And then you hand these newspapers to your employees? A. That is right.

Q. And they sell them for you?

A. That is right.

(Testimony of Willie Schullman.)

Q. (By Mr. Compton) You testified that you paid the boys a commission on their sales?

A. That is right. [707]

Q. And do you make a profit on their sales?

A. Very slight.

Q. Now, the papers that you sell on that corner, —among the papers that you sell on that corner are the Herald? A. The Herald.

Q. And the News. A. The News.

Q. Do you sell any other papers?

A. Yes, a few leftovers that the Examiner and Times leave me.

Q. Do you sell the Jewish Voice?

A. No, sir.

Q. Do you sell any other newspapers at all?

A. Yes, sir, I do.

Q. What papers do you sell?

A. I sell the Legal Journal.

Q. The Daily Journal?

A. The Daily Journal, and the People's World, the Wall Street Journal, and a few magazines.

Q. What magazines do you sell?

A. I sell the Liberty, Post, Look, and Time, and Collier's.

Q. Are you a member of the Newsboys Union?

A. I am.

Q. Do you receive a check from the Los Angeles Evening Herald and Express? A. I do. [708]

Q. And as a part of your business do you also act as check man for the Evening Herald and Express? A. I do.

(Testimony of Willie Schullman.)

Q. And do you, in the pursuit of your duties as a wholesaler, do you give out papers to other boys on offspots? A. I do.

Q. And check them in? A. I do.

Q. Are these boys to whom you wholesale newspapers the same boys that you testified were employed by you? A. No, sir.

Q. They are entirely different boys?

A. Different.

Q. And you do not make any profit or commission on newsboys that you wholesale out to?

A. If I might take time I will explain just what I do there. The boys in the zone who I give out papers to, they make all their profits, like I have got a fellow that works half a day for me, sometimes he only sells 20 or 25 papers, which is only half a dollar profit, and I get my dollar. In the end I try to make things balance, even itself up.

Q. Mr. Schullman, do you sell any special editions of papers that come out during the year, for instance, the Mid-Winter Times?

A. Yes, I do. [709]

Q. Do you also sell the Mid-Winter Examiner?

A. No, sir.

Q. Do you sell Rose Bowl folders or anything like that? A. Yes, sir.

Q. You do? Do you also get a check from the News? A. I do.

Q. And do you perform wholesale duties for the News? A. I do.

(Testimony of Willie Schullman.)

Q. And in pursuance of your duties do you wholesale newspapers to other boys, offspot boys?

A. I do.

Q. Are those offspot boys the same ones that you testified were employed by you? A. No.

Q. They are different boys?

A. That is right.

Q. And you do not make any profit on the papers that you wholesale to these boys?

A. No, sir.

Q. Did you ever hold office in the Newsboys Union? A. I did.

Q. What was it? A. Treasurer. [710]

Q. (By Mr. Mouritsen) Do you get magazines from Joe Woods? A. I do.

Q. He is the District Manager of the Herald and Express? A. Not my district.

Q. He is the District Manager of the Evening Herald and Express?

A. Well, yes, sir, he is.

Q. Who is your District Manager on the Evening Herald and Express?

A. Well, right now I presume Sollie Epstein is.

Q. Why do you only presume that?

A. Because Charley Williams, who was this two weeks ago, is on a vacation, so I am just assuming that.

Q. In other words, the regular district man is on a vacation?

A. Is on a vacation, that is right.

(Testimony of Willie Schullman.)

Q. And he is replaced by another district manager? A. Sollie. That is right.

Q. Where do you check in?

A. On my corner, to the people I have just mentioned, the two persons I just mentioned, Charley Williams and Sollie.

Q. During the past year or so, Mr. Schullman, have papers on occasions been printed before nine o'clock? I refer to days such as election days.

A. Yes, I think they have.

Q. And on those days do you tell the boys to whom you [711] wholesale papers to come down early?

A. No, I don't, because my boys don't come on until after school hours, who I referred to in the previous testimony.

Q. And this wholesaling operation that you perform for the Herald and Express consists of nothing more than counting out those papers to the boys and checking them in, isn't that correct?

A. That is right.

Q. And you count the papers out to them at the same price as you receive, isn't that correct?

A. Well, except those five that I mentioned.

Q. Now, to the others to whom you count out papers you pass them out at the same price?

A. No—well, I don't quite get your question; I wish you would repeat it, please.

Q. These boys other than the five to which you have referred? A. Yes.

(Testimony of Willie Schullman.)

Q. You count out to them the papers at the same price that you receive for them?

A. That's right.

Q. On these occasions when the papers come out before nine o'clock, did you appear on your corner at the earlier hour? A. I did. [712]

Trial Examiner Kennedy: Do you have a Social Security card?

The Witness: I have.

Trial Examiner Kennedy: Do you know who is registered with that agency as your employer?

The Witness: Well, I imagine the Herald is.

Trial Examiner Kennedy: You do not know that?

The Witness: Well, I took it out on account of getting a check from the Herald, so I imagine that is what it ought to be.

Trial Examiner Kennedy: Have you had any relations with the Social Security Board with respect to the persons that you have testified to here as being your employees?

The Witness: No, I don't consider them my employees.

Trial Examiner Kennedy: You do not consider them your employees?

The Witness: Well, I don't know how you would go about it.

Trial Examiner Kennedy: I understood you to testify that you had some men working for you.

(Testimony of Willie Schullman.)

Trial Examiner Kennedy: On a commission basis?

The Witness: Yes.

Trial Examiner Kennedy: But you don't call them your employees?

The Witness: No, sir. [713]

Cross Examination

Q. (By Mr. Hall) What newspapers, printed matter, do these commission men sell?

A. What is that, sir?

Q. What newspapers or printed matter, what newspapers or magazines do the commission men sell?

A. They don't sell any magazines; they just sell the Herald and the News.

Q. And they are men that you can take on at any time and let off at any time you please, aren't they? A. What is that?

Q. They are men that you can take on any time, and let off any time you please, aren't they?

A. I don't get what you mean.

Q. All right, let's see. You can take on these men at any time that you please, can't you? You can hire them any time you please?

A. That is right. Nobody tells me——

Q. It is up to you, isn't it? [715] A. Yes.

Q. And when it comes to letting them go or firing them, it is up to you, isn't it?

A. That is right.

(Testimony of Willie Schullman.)

Mr. Compton: If the Examiner please, I have just discovered what they are talking about when they mentioned stubs, and I will be perfectly willing to stipulate that on the checks given to wholesalers there is a stub on the bottom, it is perforated, which shows for the wholesaler's records the amount paid by the Herald as Social Security tax and so on, based on the amount of the check.

Mr. Mouritsen: That is acceptable, and I won't have to call the witness back; and Mr. Binford, may I have the same stipulation with reference to checks received by this man from the News?

Mr. L. B. Binford: I am not able to offer you a stipulation at this time because there are no members of the News present. I have but slight doubt but that that is correct, and I will be glad to investigate it. [716].

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony of the witness, Willie Schullman, has no application to the Los Angeles Times case?

Mr. Mouritsen: That may be so stipulated. May it also be stipulated, Mr. Hall, that it has no reference to the Examiner?

Mr. Hall: I am not stipulating on that with respect to this witness, Mr. Mouritsen.

JOHN J. GALLAGHER,

called as a witness by and on behalf of the Evening Herald and Express, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Compton) Where do you reside, Mr. Gallagher?

A. 172 West 43rd Street.

Q. What is your present occupation?

A. Newsboy.

Q. How long have you been in that occupation?

A. About 20 years.

Q. Where is your present location?

A. Seventh and Main. [717]

Q. How long have you been in that location?

A. 20 years.

Q. From whom did you acquire that location?

A. A fellow by the name of Harry Studd.

Q. Did you pay anything for that location?

A. Yes.

Q. How much? A. About $300.00.

Q. Do you employ any assistants, Mr. Gallagher? A. Yes.

Q. How many?

A. Well, five altogether.

Q. Five altogether? A. Yes.

Q. And how do you pay them?

A. I pay them so much a day on a commission basis.

Q. So much a day on a commission basis?

(Testimony of John J. Gallagher.)

A. Yes.

Q. You buy the papers from the newspaper, the publisher? A. Yes, sir.

Q. And then you parcel them out to your employees? A. Yes, sir.

Q. And you pay them a commission on what they earn? A. Yes.

Q. And you retain the balance of the commission for your [718] profit?

A. Very little.

Q. Very little? A. Very little.

Q. What newspapers do you handle?

A. Well, I handle the Evening Herald and Express, the Evening News, the morning Examiner and Times, the Daily News, and the Jewish Forward, and then sometimes I used to handle that paper, the Ham and Eggs.

Mr. L. B. Binford: Mr. Gallagher, when you refer to the Evening News and the Daily News, as a matter of fact that is all the News now, isn't it?

A. It is all the News, but one is the morning and one is the evening.

Q. Editions?

A. Yes—well, the Morning News and the Evening News. It is the same paper but two different editions.

Q. It is all one name now, isn't it?

A. Yes.

Q. (By Mr. Compton) Do you sell any maga-

(Testimony of John J. Gallagher.)

Q. What magazines?

A. Liberty, Collier's, Time and Look.

Q. Do you sell any mid-winter editions of the paper? A. Yes. [719]

Q. From whom do you purchase the magazines?

A. Well, I get my Collier's and Time from the L. A. News Company. I get my Libertys from Joe Woods.

Q. Do you receive any check or compensation from the Evening Herald and Express?

A. Nothing at all from anybody.

Q. You don't receive any check or compensation from the News? A. No, sir.

Q. What was the name of the man you said you bought the corner from?

A. Harry Studd.

Q. And had he owned and occupied the corner before you? A. Yes, sir.

Cross Examination

Q. (By Mr. Mouritsen) These copies of the Times which you handle, are those just a few copies that are left there from the morning boys?

A. Yes. I take about ten of each.

Q. That is, ten of the Times and Examiner and the morning editions or earlier editions of the News? A. Yes.

Q. And about how many Heralds, copies of the Herald and Express, do you sell a day? [720]

A. Well, I judge about 300.

Q. And how many copies of the News?

(Testimony of John J. Gallagher.)

A. About 200, 240.

Q. How many magazines do you sell a week?

A. About 75 Libertys, 25 Collier's, and 50 Posts.

Q. And these other—I think you said the Jewish Forward, about how many copies of that?

A. I think about 25 a day.

Q. Do you recall the name of your Express district man at the time when you took over the corner first?

A. Well, I think it is the same guy, this Charley Williams. I think he was the district manager on the district at that time.

Q. And did he say that it was all right for you to handle papers there? A. Yes, sir.

Q. Did he say that before you acquired the corner?

A. Well, before I acquired the corner, see, I worked for Harry Studd, who had it, for the Evening Express. This fellow first used to work on it, too. So I asked Davey Bell and he said it would be all right for me to be there.

Q. That is the same David Bell who is still connected with it? A. Yes. [721]

Q. What hours are you on that corner?

A. 9:30 to 7:00. I generally knock off about 6:00 o'clock, and by the time I fool around and check up and put stuff away it is 7:00 o'clock before I get away.

Q. What do you mean when you check out? Is that checking in to the district man?

(Testimony of John J. Gallagher.)

A. Well, I get my papers all together and put them away and everything like that.

Q. And when do you check in to the district manager, if you do?

A. Every morning about 10:00.

Q. And where do you check in?

A. Seventh and Main.

Q. Has the district manager of the Evening Herald and Express ever told you you would have to get rid of any of these boys that you say work for you? A. No, sir. [722]

Q. Well, has the district manager ever said anything to you about putting some of these boys on to keep the spots covered? A. No, sir.

Q. Has the number varied at all in the last three years, or have you had five boys all during that period? Have you had five boys for the 20 years you have been on the spot?

A. Not the same boys. I did have five boys all the time.

Q. Are you a member of the Newsboys Union?

A. No, sir.

Redirect Examination

Q. (By Mr. Compton) Mr. Gallagher, I was not sure, but I understood you to state on examination by Mr. Mouritsen—did you state that you were employed by the Evening Herald and the News?

A. No, sir.

Q. You are not employed by the Evening Herald and News? A. No, sir.

(Testimony of John J. Gallagher.)

Q. You do not get any check or compensation from either the Evening Herald and Express or the News? A. No, sir.

Recross Examination

Q. (By Mr. Mouritsen) Are there any other boys than these five that come to you for papers? [723] A. No, sir.

Q. You are permitted full returns?

A. Yes, sir.

Q. In the early part of 1937 were you permitted to return unsold copies?

A. I always was.

Q. You always have been? A. Yes, sir.

Q. When do you return the unsold copies of the papers?

A. Every morning about 10:00 o'clock, when I check in with Charley Williams.

Mr. Cosgrove: Will it be stipulated, Mr. Mouritsen, that the testimony of John J. Gallagher is not intended to apply to the Los Angeles Times case.

Mr. Mouritsen: It may be so stipulated. [724]

MILTON NEWMAN

called as a witness on behalf of the respondent the Evening Herald and Express, being first duly sworn, was examined and testified as follows:

(Testimony of Milton Newman.)

Direct Examination

Q. (By Mr. Compton) Where do you reside?

A. 808 Winthrop Drive, in Alhambra.

Q. What is your present occupation?

A. Selling newspapers.

Q. How long have you been in that occupation?

A. Well, since I have been seven years old—about thirty years—I mean about twenty-five years.

Q. Where is your present location?

A. Fifth and Olive, opposite the Biltmore Hotel.

Q. How long have you been in that location?

A. Fourteen years.

Q. From whom did you acquire your corner?

A. Mike Axelrod.

Q. Did you pay anything for it?

A. Yes, sir.

Q. What was the amount of the purchase price?

A. It varied at times. Sometimes I gave him $125 and sometimes about—and then I loaned him some money and he called it square—about $250.

Q. The total purchase price was about $250?

[725] A. That is right.

Q. What newspapers do you vend on that corner?

A. Herald and Express, News, morning papers.

Q. Do you have any of the Jewish language newspapers there? A. No, sir.

Q. Do you sell any magazine?

A. Yes, sir.

Q. What magazine?

(Testimony of Milton Newman.)

A. Liberty, Colliers, Post, Time, and Look magazine.

Q. From whom do you acquire your magazines?

A. Liberty and Colliers—Liberty and Post from Joe Woods, and the Colliers, Time and Look magazine from the L. A. News.

Q. Do you employ any assistants, Mr. Newman?

A. Three boys after school.

Q. How do you pay them?

A. Salary and commission.

Q. Salary and commission?

A. That is right.

Q. Do you receive any check or compensation?

A. No, sir.

Q. From the Los Angeles Evening Herald and Express? A. No, sir.

Q. Do you receive any check or compensation from the News? A. No, sir.

Q. When do you appear on the corner in the morning? [726] A. 9:30.

Q. Do you stay on the corner all day?

A. No, sir.

Q. Do your employees stay on the corner when you are not there?

A. No. They don't come down until after school.

Q. You go and come as you please?

A. That is right.

Mr. Compton: I think that is all. Thank you, Mr. Newman.

Mr. L. B. Binford: Mr. Mouritsen, will it be

(Testimony of Milton Newman.)

stipulated that the L. A. News, to which the witness made reference, is not intended to mean the News, one of the parties to this action?

Mr. Mouritsen: Yes, that will be so stipulated.

Mr. L. B. Binford: And that a previous witness who referred to the same institution, to the L. A. News, that that is not intended to mean the News, the party to this action?

Mr. Mouritsen: That is correct. Wherever reference has been made to the source——

Mr. L. B. Binford: ——of supply of magazines.

Mr. Mouritsen: Yes.

Cross Examination

Q. (By Mr. Mouritsen) Mr. Newman, do you pay any Social Security on these boys that you term your employees? [727] A. No, sir.

Q. Do you pay any Workman's Compensation on them? A. No, sir.

Q. Who is the District Manager for the Evening Herald and Express?

A. Mr. Epstein.

Q. Is that Sollie?

A. That is right.

Q. Who brings you the papers?

A. Truck.

Q. The Evening Herald and Express truck?

A. That is right.

Q. How do you obtain the News, copies of the News, yourself?

A. From Martinez, who delivers them to the corner.

(Testimony of Milton Newman.)

Q. How late do you stay on the corner?

A. Seven o'clock, sir.

Q. When do you check in?

A. That evening.

Q. About what time?

A. 6:30, quarter to 7:00, 7:00 o'clock—between 6:30 and 7:00 o'clock.

Q. Do you check in before 7:00? [728]

A. Yes, sir.

Q. And you still remain there until 7:00?

A. Yes, sir.

Q. These magazines that you sell, how do you have them displayed? Just laid down, or what?

A. That is right. I have a little rack there on the corner and I put it next to the pole, and I put these magazines in the little rack, and my—that's right; just wherever these little racks are, I have my papers on the ground right next to them.

Q. And you don't carry those around in your arms as you do the Evening Herald and Express?

A. No, sir.

Q. Or the News? A. That is right, sir.

Q. And what is the customary manner for you to display the Herald and Express and the News?

A. Meaning what? I don't understand that.

Q. In what manner do you display them?

A. You mean hold them out?

Q. Yes, hold them out.

A. Well, the News down below and the Herald up above. I only have two hands and that is the only way I can do it, hold my papers in my hands.

(Testimony of Milton Newman.)

Q. In other words, you give them an even break? [729] A. That is right—try to.

Q. Did you attend a meeting in Mr. Harrison's office prior to the time when you started to handle the News in addition to the Herald and Express?

A. No, sir.

Q. How long have you been on this corner?

A. Fourteen years.

Q. Well, were you operating on this corner when Mr.—when you started to handle the News?

A. No. It was a separate paper then.

Q. Well, you now handle them both?

A. That is right.

Q. During the period while you have been on this corner, there has been a time when you have not handled them both? A. That is right.

Q. Now, about when did you start handling both of them?

A. [730] That was about two months before they consolidated.

Mr. Compton: If the Examiner please, I have a very strong feeling that this witness is confused by reason of the fact I think from the use of the term "consolidation," the witness is referring to the purchase by the Evening Herald and Express of the Old Los Angeles News, or of the old Los Angeles Express. Do you understand that what he is talking about is the sale of the present News, Mr. Newman?

The Witness: I understood that the News is a separate paper.

(Testimony of Milton Newman.)

Mr. Compton: That is right.

Trial Examiner Kennedy: Well, let's clear it up. What consolidation are you talking about, Mr. Newman? [731]

The Witness: Well, when we started handling both papers, the Herald and Express and the News.

Trial Examiner Kennedy: As they are now set up?

The Witness: Yes, as they are now selling.

Mr. Compton: That is right.

Q. (By Mr. Mouritsen) Now, when did you start handling both papers together?

A. Oh, I can't tell you offhand exactly, the exact date.

Q. I don't want that. Just the approximate—the year. Let's start out with the year.

A. Well, about two years ago, approximately.

Q. Now, from whom did you find out that you were going to handle both papers? Now, just the name. Who was it?

A. No special name. They just came there——

Q. Well, wait a minute. I want to find out from whom you first ascertained you were going to handle both papers, the name of the man.

A. Bill Axelrod.

Q. Do you have any dealings with Bill Axelrod during the course of your operations of selling for the Evening Herald and Express and the News?

A. Yes, I do.

Q. What is that connection?

(Testimony of Milton Newman.)

A. I pay him in the evening for the papers. I check in to him. [732]

Q. Oh, you don't check in to the district man?

A. No.

Q. I see. Do you receive any copies of the editions of the papers from Bill Axelrod?

A. As they drop them off, why, we all have our own orders and we go after them at Fifth and Hill. I have to walk down to Hill Street because I am at Fifth and Olive and the papers are all dropped at Fifth and Hill.

Q. Have you ever attempted to secure a delivery of the papers at your spot rather than——

A. No, sir.

Q. Now, about when did you talk with Bill Axelrod about the fact that you were to handle both the News and the Evening Herald and Express.

A. I didn't speak to him about handling them. He just told me that they were going to give both papers to the boy on the corner.

Q. I see. And——

A. With no special reference to when we were going to have them or anything about it. I had been handling them two months before due to the fact that they couldn't keep a man on the corner there.

Q. You mean due to the fact that the News couldn't keep a man on your spot?

A. There was no one to handle the papers there. [733]

(Testimony of Milton Newman.)

Q. Well; now, with whom did you make the arrangements two months before that time to handle both papers?

A. Bill Barrel—Barrel or Barrett—from the News.

Q. At the present time, Mr. Newman, are you permitted to return all unsold copies of the Evening Herald and Express?

A. I have been, yes.

Q. You are now? A. Yes, sir.

Q. And has that always been the case in the past? A. Yes, sir.

Q. Even before the consolidation—or, strike that.

Even before you started to handle both the News and the Evening Herald and Express?

A. Yes, sir.

Q. There has been no time during the past five years when you have not been permitted to return all unsold copies of the Evening Herald and Express? A. No, sir.

Q. To whom do you check in these unsold copies of the Evening Herald and Express at present?

A. When we come down—Bill Axelrod. I bring them down and he throws them on the truck.

Q. You check those in to Bill Axelrod?

A. Yes.

Q. And have you done that for the past five years? [734] A. No.

Q. To whom did you return the unsold copies before? A. To Seventh and Hill.

(Testimony of Milton Newman.)

Q. And when did you do that, during what period? A. The next morning.

Q. How long have you been checking these unsold copies in to Bill Axelrod?

A. About a year and a half or two years.

Q. All right. Now, prior to that time where did you check them in?

A. Seventh and Hill.

Q. To whom? A. Sollie Epstein [735]

Q. (By Mr. Mouritsen) Now, where are these three boys situated to whom you supply papers?

A. One is on my corner.

Q. Which corner is that?

A. Fifth and Olive.

Q. Which corner is it on the intersection?

A. Northeast.

Q. Northeast? A. That is right.

Q. Where are the other two?

A. One is on the north—I mean southwest, and one is in front of the Biltmore Hotel.

Q. And that is on the south——

A. Southwest side of the street.

Q. Southwest. Now, when did you obtain that spot, the Biltmore corner spot, southwest corner of Fifth and Olive?

A. When I first went to work up there.

Q. At any time in the past was that corner, namely, the Biltmore Hotel corner——

A. (Interrupting) That's right.

Q. (Continuing) ——southwest, handled by—

(Testimony of Milton Newman.)

handled through Bill Axelrod? A. Yes, sir.

Q. When was that?

A. Three and a half years ago. [736]

Q. And for how long was it handled through Bill Axelrod? A. About a year and a half.

Q. How did you obtain that corner again after it was taken over and handled through Bill Axelrod?

A. Bill Axelrod asked me to buy the corner and I refused to buy it, being as it was mine originally. I went to the office——

Q. (Interrupting) Whom did you see in the office? A. Mr. Bell.

Q. Davey Bell?

A. That is right. And Mr. Harrison. And he asked the circumstances of it——

Q. (Interrupting) Now, can we fix the time of that? About what time?

A. I don't understand.

Q. The date. Approximate date, month or year.

A. No, I haven't any idea when it was.

Q. Was it during 1938?

A. About 193—just before 1938.

Q. Was it about the time when the price of the Evening Herald and Express was raised?

A. It was before that.

Q. How long before that?

A. A year—no. Four months before that.

Q. And if I tell you that the date of that price raise was November 1, 1937, then would the time be about four months [737] before that?

(Testimony of Milton Newman.)

A. Yes, sir. I made a mistake on the time limit of when the paper went up to a nickel. It appears to me it was just two years ago.

Q. You had this conversation with Mr. Bell and Mr. Harrison at the Examiner office?

A. Herald.

Q. At the Herald office? A. Yes, sir.

Q. Was anyone else present?

A. No, sir.

Q. Just you three? A. That is right.

Q. Now, will you state what you said and what Mr. Bell and what Mr. Harrison said?

A. Well, the corner was originally mine——

Q. (Interrupting) No. Now, I am just——

A. (Interrupting) I am trying to tell you what happened, what I said.

Q. All right.

A. The corner was originally mine. Through some manipulation, why, I had lost it and I don't realize now how I lost it, and Mr. Axelrod came to me with a proposition, because he couldn't keep a man there, that he would sell me the corner. I told him that it was originally mine and I didn't [738] want to buy it back for something that I originally had. I went to the office and explained my case to them and they told me that they would speak to William Axelrod and the corner was reverted back to me.

Q. Given back to you by Mr. Bell and Mr. Harrison?

(Testimony of Milton Newman.)

A. No. It was reverted back to me.

Q. Well, what do you mean by that? It happened as a result of this conversation you had with Bell and Harrison, didn't it?

A. I believe so.

Q. Now, you say you obtained that corner originally. You obtained that from Mike——

A. (Interrupting) Axelrod.

Q. ——Axelrod. And then you lost it, is that it?

A. That is right.

Q. How were you notified that you could no longer operate on that Biltmore Hotel corner?

A. By William Axelrod.

Q. Was he the only person who told you you couldn't——

A. (Interrupting) That's right.

Q. Did you speak to Mr. Bell or Mr. Harrison at that time? A. Yes, sir.

Q. Where did you have the conversation with them? A. In the circulation room.

Q. Of the Evening Herald and Express?

A. That is right. [739]

Q. Who were present other than yourself and those other two men? A. I don't remember.

Q. Now, how long were you off the, or how long did you not handle the papers on that Biltmore Hotel corner?

A. I had the Biltmore Hotel after three o'clock and——

Q. (Interrupting) Just a minute.

(Testimony of Milton Newman.)

A. I will lead up to that in just a minute. The corner was mine originally and they had taken the corner away, but they did not take the Biltmore entrance away, which my brother was selling papers there.

Q. Who do you mean by "they"?

A. William Axelrod. He put a man up there and I asked him why, and he said, "Well, I am just putting him there."

Q. Now let's get the conversation that you had with Mr. Bell and Mr. Harrison regarding that.

A. Well, I went up there and spoke to them about that, and they said, "Well, Mr. Bell is running the corners there and we have no authority there," at that time. They says, "He has a man he wants to put up there that really needs it very badly," and they told him to use his own judgment.

Q. And then later you got the corner back? [740]

The Witness: Yes, sir.

Q. Are you a member of the Newsboys Union at present?

The Witness: No, sir.

Redirect Examination

Q. (By Mr. Compton) Were you formerly a member of the Newsboys Union?

A. Yes, sir.

Q. And did you voluntarily sever your connection with that union? A. Yes, sir. [741]

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony of the witness, Milton Newman, has no application to the Los Angeles Times case?

Mr. Mouritsen: It may be so stipulated.

JOE WOODS,

recalled as a witness on behalf of the respondent the Evening Herald and Express, being previously duly sworn, resumed the stand and testified further as follows:

Direct Examination

Q. (By Mr. Compton) Mr. Woods, you have previously testified that you true name is——

A. (Interrupting) Sam Epstein.

Q. (Continuing) ——Sam Epstein?

A. Yes, sir.

Q. Now, Mr. Woods, there has been some testimony in the record that you sell and distribute certain magazines. A. Yes, sir.

Q. By the way, you have been on the stand before, haven't you, in this matter? A. Yes.

Q. And you testified that at present you are employed as a [742] district man for the Los Angeles Evening Herald and Express?

A. Yes, sir.

Q. How long have you been selling and distributing magazines, Mr. Woods?

A. Since 1924, when the Liberty first come out.

Q. At that time did you have any other occupation?

(Testimony of Joe Woods.)

A. I was district man on the Record.

Q. That is the old Los Angeles Record?

A. The old Los Angeles Record that is now the Evening News.

Mr. L. B. Binford: Evening News or the News?

The Witness: The News.

Q. (By Mr. Compton) Will you please state the circumstances, that is, how it was that you first started selling magazines?

Mr. Mouritsen: Mr. Examiner, I object to this on the ground that it is incompetent, irrelevant and immaterial.

Mr. Compton: If the Examiner please, it has very great competency, relevancy and materiality. The Examiner has seen fit to load the record with testimony concerning the delivery of two magazines to these newsboys, and the fact that Mr. Woods is presently—I beg your pardon—Mr. Mouritsen has seen fit to bring into the record much testimony concerning magazines sold by these newsboys which were distributed by Mr. Woods.

We propose to show—and he apparently is attempting to connect such sale and delivery with the Los Angeles Evening [743] Herald and Express. We propose to show that Mr. Woods has been in this business since 1924. I have forgotten, but I think that was eight or nine years previous to his connection with the Evening Herald and Express. I think it perfectly proper to show that not only has he been in that business, but that he has carried it on

(Testimony of Joe Woods.)

separately and independently from his employment with the Record and thereafter with the Los Angeles Evening Herald and Express, and that he is still carrying it on independently, as an independent occupation, and that the money he derives therefrom is his own; that he himself employs newsboys and owns a truck or automobile to distribute them, and so on.

In other words, those are, I think, facts all relevant and material to show that in the sale of these magazines it has no connection with his duties as district man for the Los Angeles Evening Herald and Express.

Trial Examiner Kennedy: Well, are those facts in dispute? Is it possible to get a stipulation on them? I think they are relevant. I am just wondering if there is any dispute about them.

The Witness: Mr. Mouritsen, I don't only deliver the magazine, just the Herald and Express to the newsboys; I have got a lot of boys that handle the Examiner at night time and also a lot of boys that sell the Times at night time that don't have anything to do with the Herald and Express. [744]

Mr. Mouritsen: Well, of course I am concerned only that that appear. With reference to the Evening Herald and Express I have no doubt that those are the facts.

Mr. Compton: I think it proper that these facts that Mr. Woods has just testified appear as a part of that stipulation; and the further fact that the sales of magazines in Hollywood under the same cir-

(Testimony of Joe Woods.)

cumstances, which is not the district which he covers as district man."

Mr. Mouritsen: I understand those facts to be so, and I also stipulate, providing Mr. Compton will stipulate to the facts that I outline.

Mr. Compton: I believe I so stated, that I will so stipulate to these other facts.

Trial Examiner Kennedy: That stipulation is accepted.

Mr. Compton: And one more addition to it.

Q. (By Mr. Compton) Mr. Woods, you also sell some news stands, don't you? A. Yes.

Mr. Compton: Mr. Mouritsen, I am not sure whether this was covered, but if it is not I would like to state for the purposes of the record, and for the purpose of the stipulation, that the Los Angeles Evening Herald and Express Department of Hearst Publications, Inc., derives no profit or benefit directly or indirectly from Mr. Woods' separate independent magazine activities; that they are carried on, however, with [745] the knowledge and acquiescence of Mr. Harrison, the circulation manager, and that the only restriction on such activities is that they shall not interfere with his activities as district man for the Los Angeles Evening Herald and Express.

Mr. Mouritsen: I will be willing to so stipulate.

Mr. Cosgrove: May it be stipulated that the stipulation just entered into has no application to the Los Angeles Times case?

Mr. Mouritsen: That may be so stipulated.

(Testimony of Joe Woods.)

Q. (By Mr. Compton) Mr. Woods, there was a witness named Sid Faber who testified during the proceeding held on Wednesday, June the 12th, 1940——

A. (Interrupting) June the 29th.

Q. Wednesday, June 12th, 1940.

A. June the 12th—oh, pardon me.

Q. This testimony appears in part in the reporters' transcript of testimony and proceedings, Volume 3, at page 308. Mr. Faber testified in part as follows:

"Q. Now, have you recently had a conversation with Joe Woods regarding a relief man for your spot? [746] A. Yes.

"Q. And approximately when did you have such a conversation?

"A. Well, the day before Decoration Day Joe Woods came down to my corner——

"Q. (Interrupting) Well, what year?

"A. June, 1940—the day before Decoration Day.

"Q. This year? A. Yes.

"Q. Where did you have such a conversation with Joe Woods? A. On my corner.

"Q. And was anyone else present who took part in this conversation? A. No, sir.

"Q. Will you please state what Joe Woods said to you and what you said to Joe Woods?

"A. Well, he said, who am I going to have to work my corner Decoration day, and I said, 'I am going to have my relief man,' and he said he didn't

(Testimony of Joe Woods.)

want that; I was to put the other fellow across the street to work there.

"Q. And did you put the fellow designated by Joe Woods to work as your relief?

"A. Well, Joe Woods went over to him and I guess he told him.

"Q. In any event, did the man whom you had selected as your relief cover the spot or take care of it? [747] A. No, sir."

Mr. Woods, do you recall whether such a conversation, or approximately such a conversation, took place at the place and at the time stated by Mr. Faber? A. I do.

Q. Was there such an approximate conversation?

A. There was.

Q. Will you state to the best of your recollection what that conversation was; that is, what you said to Mr. Faber and what Mr. Faber said to you?

A. Well, I went by there and I asked Sidney if he was going to sell papers tomorrow——

Q. (Interrupting) That is, by "tomorrow" you mean Decoration Day?

A. That is Decoration Day. He said, "No, I am going to have my relief man there." I said, "Who is your relief man?" He said, "That little old man," and I says——

Q. (Interrupting) Just a moment. In saying "that little old man" did you say he designated or point out any particular person?

A. No. The fellow was not there, but I knew—

(Testimony of Joe Woods.)

I said, "Do you mean that little old fellow that relieves you while you go to lunch?" He said, "Yes." I said, "That won't be right to have a fellow like that sell papers on your corner being tomorrow is Decoration Day, and we have the big races, [748] and the opening of Hollywood Park for the horse races, and," I said, "I wish you would put a fellow here that would give me a little more representation. He is an old man and he may run across the street and be hit by a machine, and," I said, "I don't know him well enough that I could trust him with a lot of money for my papers."

He said, "Who do you think you want to put there?" I said, "That's up to you." I said, "What's the matter with Red, over here? He is not doing anything. Why don't you let him sell papers on your corner?"

He said, "That's all right." So I went over there and I asked Red, "Are you willing to sell papers for Sidney over there?" and he said, "Yes." That's all that took place.

Q. (By Mr. Compton) What was the name of this off spot corner man?

A. The off spot—Barrett, I believe his name was.

Q. Barrett? A. Yes, sir.

Q. Wasn't he the Mr. Barrett who testified yesterday, or the day before yesterday, in this proceeding? A. I believe he was.

Q. And did Mr. Barrett cover that corner on Decoration Day? [749] A. He did.

(Testimony of Joe Woods.)

Q. And that was a wholesaler's spot, wasn't it?

A. Well, it is a—you can't very well say a wholesaler's spot. All the boys come there and get their papers, but it makes it——

Mr. Mouritsen (Interrupting): Will you continue, Mr. Woods? Have you completed your answer?

The Witness: Well, I just drop the papers there, that's all. The boys come over there and get their own papers the same as they do on the News.

Q. (By Mr. Compton) There is no paid Wholesaler on that corner, is there?

A. No, sir.

Q. That was the only day that Mr. Barrett worked there? A. Yes, sir.

Q. And normally Mr. Barrett works on the opposite corner, doesn't he? A. Yes, sir.

Q. Mr. Woods, there was some testimony introduced into this record by one Mr. Gish—one Harry Thomas Gish, who testified in these proceedings on Wednesday, June 12, 1940, and his testimony appears in the reporter's transcript of testimony and proceedings, at Volume 3, commencing at Page 365, reading on Page 366, I will read you the testimony of Mr. Gish:

"Q. During the year 1937 did you sell the Evening Herald and [750] Express? A. Yes.

"Q. At what spot, if any?

"A. Well, in front of the Grand Central Market at Third and Broadway.

(Testimony of Joe Woods.)

"Q. And who was your district man?

"A. Why, Joe Woods.

"Q. Now, were you ever removed from that spot by Joe Woods? A. Yes.

"Q. And when did that occur?

"A. I would say that was sometime before Christmas in 1937.

"Q. Now, will you tell us just what occurred with reference to your removal from that spot?

"A. Well, when I came to work on one Monday morning I was asked by the man on the main corner if I had been told anything the week before and I told him no, and he said, 'Well, there is a man in your place and Joe Woods said for you to come and see him at Third and Hill'; and I went to see Joe. So he said he had——

"Q. Now, you saw him at Third and Hill?

"A. Yes.

"Q. And approximately what was the date of that conversation?

"A. Well, I wouldn't be able to recall just the exact date, but it was sometime before Christmas in 1937. It could possibly have been two months before or maybe a little less or a [751] little more. I couldn't state just definitely.

"Q. And was anyone else present at that time?

"A. When I talked to Joe Woods?

"Q. That is right.

"A. Well, there was a man on the corner, yes, but he wasn't paying any attention to what we were talking about.

(Testimony of Joe Woods.)

"Q. What did Joe Woods say to you and what did you say to Joe Woods?

"A. I asked him what was the matter. He said, 'Well, I have had a lot of complaints against you.' That is what he told me, and he said, 'I will try and get you back on the corner.' That is what he told me. And he said, 'Come around and see me again,' and I went whenever he told me, whenever it was; in fact, I went three or four times and he promised me the same thing every time but he never did put me back."

Reading from the cross examination on Page 367 further:

"Q. In this conversation you had with Mr. Woods, or any of the conversations concerning which you have testified, did Mr. Woods tell you the nature of the complaints he had?

"A. Well, he said something or other to the effect that I had on a dirty shirt.

"Q. Is that all the complaints?

"A. That is all he ever told me."

Mr. Woods, did you have any conversation at all with Mr. Gish at or about the time he testified to? [752] A. Yes, sir.

Q. Where were the conversations had?

A. In front of the Grand Central Market on Broadway between Third and Fourth.

Q. Do you know how many such conversations you had with him? A. Two.

Q. Can you tell us approximately the time of the first conversation?

(Testimony of Joe Woods.)

A. Well, it was on a Monday morning when I come back to work from my vacation, and I was walking around the district there, and I——

Q. (Interrupting) Did you talk to him on that day? A. Yes.

Q. Do you recall about the date of your return from your vacation?

A. It was about the middle of December, 1937.

Q. 1937? A. Yes.

Q. And did you have a conversation with Mr. Gish at that time?

A. Well, when I saw Mr. Gish was selling papers——

Q. (Interrupting) Just answer the question, Mr. Woods. Did you have a conversation with Mr. Gish at that time? A. Yes, sir.

Q. And that conversation was where? [753]

A. In front of the Grand Central Market on Broadway between Third and Fourth.

Q. And who was present at that conversation?

A. Nobody.

Q. Well, that is, nobody other than you and Mr. Gish? A. That is all.

Q. What did you say to Mr. Gish and what did he say to you?

A. Well, I come back to work on the Herald and I was standing on Third and Hill and a man come up——

Q. (Interrupting) Wait a minute. All you have to say is what you said to Mr. Gish and what he said to you.

(Testimony of Joe Woods.)

A. I asked him, "Harry," I says, "who gave you the papers to sell over here?" "Well," he said, "the old man left," and he said, "I just went ahead and thought it would be all right, nobody was covering the spot, so I thought it would be all right to sell the papers here." I said, "Well, I had a very bad complaint about you," I said, "my first day coming back," and he said, "What was that?". And I said, "The manager from the market came up to me at Third and Hill and he said the fellow you have selling papers over in front of the market has a very bad body odor and is not very clean and people have been complaining to me"; and I said, "That couldn't be the old man that has been selling the papers there for quite a number of years." And so I walked down there in front of the market and that is when I saw Mr. Gish there. [754]

Q. Now, Mr. Woods, did you repeat what you have just said about these complaints to Mr. Gish? Did you tell Mr. Gish about the complaints?

A. I did.

Q. And what else did you say to him?

A. Well, I told him that he would have to clean himself up a little bit in order to sell papers down there, that the people were complaining, that I would help him out and bring him down a shirt and some socks. He couldn't wear any of my shoes, and I gave him a quarter to go and get himself cleaned up, and he promised he would do it.

Q. (By Mr. Compton) Did you actually give Mr. Gish some shirts and other wearing apparel?

(Testimony of Joe Woods.)

A. I did.

Q. Now, did you have any further conversations with Mr. Gish? A. I did not.

Q. Well, did you ever have any conversations with him after that? [755]

A. I did not, outside of seeing him on the corner of Sixth and Spring, just talked to him, not about any corner or any business.

Q. He testified as to a conversation he had with you when some other man was put on the corner. Did you have such a conversation with him?

A. No, sir.

Q. I want to recall to your recollection, Mr. Woods, that you said you had two conversations with Mr. Gish. You have testified to one.

A. Well, that was the conversation the next day. I didn't have any conversation with him at Third and Hill.

Q. You never had any conversation with him at Third and Hill?

A. No. When I brought the clothes down to him the next day I asked him if he wouldn't please clean himself up as there had been two complaints that same day.

Q. Now, we have covered that. Now, sometime later didn't you have another conversation with Mr. Gish? A. Yes.

Q. About what time was that?

A. Well, that was about a week afterwards.

Q. And where was the conversation?

(Testimony of Joe Woods.)

The Witness (Interrupting): The conversation was on [756] Third and Broadway.

Q. Who was present at that conversation?

A. Why, there was nobody present.

Q. Except you and Mr. Gish?

A. Yes, sir.

Q. And what did you say to Mr. Gish? [757]

A. The manager from the Homer Laughlin Building called me up at the Herald and Express and he said, "I thought you were going to remove that fellow from that corner"; and I said, "Well," I said, "the fellow is all right now." I said, "I think he has cleaned himself up a little bit." He said, "He has not." I said, "Well, pardon me, but I will go down there and I will see." So I went down there.

Q. Now, wait a minute. You are relating a conversation. Did you repeat all this to Mr. Gish?

A. I did.

Q. Now, you are talking to Mr. Gish now?

A. Yes.

Q. What else did you say to Mr. Gish?

A. I said to Mr. Gish, I said, "Harry, two days ago I have given you some clothes," and I said, "What did you do with them?" He said, "Oh, I have got them up there somewhere," and I said, "Well, people are complaining there for the last three days of your condition," and I said, "The people in the market there, in the meat market, Mr. Reeden, has personally come up to me at Third and

(Testimony of Joe Woods.)

Hill and told me if I do not re- [758] move that fellow, quit giving him any papers down there, that he was going to take it up with the health authorities," and I told that to Mr. Gish.

Q. And did you tell Mr. Gish that you would have to put somebody else on that spot?

A. No, I just told him I would have to quit giving him my papers to sell down there, that he couldn't handle my papers on account of people were complaining and I couldn't stand for any complaints of that kind.

Q. And did you actually sell your papers to another vendor at that particular location?

A. I did.

Q. Mr. Woods, are you a member of any labor organization?

A. Yes, the Newspaper Guild of the C. I. O.

Cross Examination

Q. (By Mr. Mouritsen) Mr. Woods, you have testified that Mike Barrett sold on Sid Faber's corner on Decoration Day, is that correct?

A. Yes.

Q. Who sold on Mike Barrett's corner? [759]

A. Nobody.

Q. That was a busy day, while people were going to the races and things like that?

A. Well, it wasn't so busy you would have to have two hustlers down there; but, Mr. Mouritsen, there is quite a few papers sold——

(Testimony of Joe Woods.)

Cross Examination

Q. (By Mr. Hall): Mr. Woods, I have understood that you sold magazines to boys and men that sold the Los Angeles Examiner?

A. At night-time, yes, sir.

Q. Would that be within the city of Los Angeles? A. Yes, sir.

Q. Any particular area in the city?

A. No particular area.

Q. And those people that sell the Examiner, that you referred to, are people that have established spots or corners? A. Yes, sir.

Q. And you don't sell magazines to bootjackers or temporary or casual newsboys, do you?

A. No, sir. [760]

Q. (By Mr. Hall): Do you or do you not sell your magazines to newsboys who carry simply and solely the Sunday editions of the Examiner?

A. No, I do not.

Q. This sale of magazines is a business that you conduct yourself and has no reference to the Hearst Publications, Inc., does it?

A. No, it has nothing to do with that whatsoever. [761]

Q. (By Mr. Hall): In general how many are there of these newsboys at established spots and corners within the city of Los Angeles handling the Los Angeles Examiner that you sell magazines to? [762]

(Testimony of Joe Woods.)

The Witness: I supply about fifteen or twenty boys.

Q. (By Mr. Hall): That sell the Los Angeles Examiner? A. Yes, and Times.

Q. And that has been true, has it, for the last two years or so?

A. Oh, longer than that.

Q. (By Trial Examiner Kennedy): Are you an employer of any of these vendors?

A. No.

Mr. Hall: I would like to have that question read.

(The question referred to was read by the reporter, as set forth above.)

Q. (By Trial Examiner Kennedy): Do you have anybody working for you at all?

A. Yes.

Q. Who do you have working for you?

A. I have two fellows. [763]

Q. What do they do?

A. They deliver my magazines for me.

Q. They are the only employees you have?

A. Yes, sir.

Q. Have you so registered them with the Social Security Board?

A. Yes, paid Social Security ever since the Social Security law has been in effect.

Q. And that is the only two people you do register with the Social Security Board?

A. Yes, sir.

(Testimony of Joe Woods.)

Q. (By Mr. Hall): These magazines that you sell to the newsboys handling the Los Angeles Examiner, you sell to them at wholesale and they in turn sell them to the public at retail; is that correct? A. Yes, sir.

Mr. Cosgrove: Will it be stipulated, Mr. Mouritsen, that the testimony given by the witness Joe Woods today has no application to the Los Angeles Times case? [764]

Mr. Mouritsen: So stipulated.

SOLLY EPSTEIN

called as a witness by and on behalf of the respondent, the Los Angeles Evening Herald and Express, and having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Compton): Where do you live, Mr. Epstein? A. 1254 West 60th.

Q. And what is your occupation?

A. District manager.

Q. For whom?

A. For the L. A. Herald and Express.

Q. What district do you cover for the Los Angeles Evening Herald and Express?

A. From Eighth to Sixth on Hill, Olive and Grand, and then [765] I have a recover territory of all the downtown area.

(Testimony of Solly Epstein.)

Q. What do you mean by a re-covery?

A. If papers are going good, why, I have to re-cover to supply the boys with more papers.

Q. Mr. Epstein, there was testimony introduced in this record, the testimony of one Harry Relis, who testified in these proceedings on Wednesday, June 12, 1940, his testimony in part commencing on page 327 of Volume 3 of the reporter's transcript of testimony and proceedings, as follows, at Line 25:

> "Q. Now, about when did Sol Epstein ever say anything to you about your being off the corner?
>
> "A. Well, approximately a year ago he met me and——
>
> "Q. (Interrupting): Met you where?
>
> "A. On Fifth and Hill. And he says to me, he says, 'What are you doing here?' and I said, 'Well, it is about one o'clock. I was supposed to be at lunch hour,' and he said, 'Don't you know you have to be on the corner?' and I says, 'I don't know; I have to have my lunch,' and I said, 'I see other boys off——' [766] and he said to me, 'Why aren't you on the corner?' I said, 'I have to have my lunch.' 'Well,' he says, 'If you don't watch out you will be off the corner entirely.'"

Mr. Epstein, did any such conversation with Mr. Relis ever take place, to the best of your recollection? A. No, sir.

(Testimony of Solly Epstein.)

Q. Mr. Epstein, have you ever seen Mr. Relis off of the corner of Fifth and Spring?

A. Yes.

Q. About how many times?

A. Oh, I would say an average of about once a week, sometimes twice, three times a week.

Q. Where do you see him?

A. Well, sometimes most any corner. I would be maybe sometimes at Fifth and Hill, maybe sometimes at Fifth and Broadway, sometimes at Seventh and Broadway, or Seventh and Hill, or Eighth and Hill sometimes.

Q. And what was he doing at those times when you saw him?

A. At that time when I saw him he was carrying Jewish newspapers—two of them.

Q. Two Jewish newspapers?

A. Yes, sir.

Q. What were the names, Mr. Epstein? [767]

A. One of them was B'Nai B'Rith Message and the other was the Jewish Voice.

Q. What was he doing with the Jewish papers, Mr. Epstein?

A. Well, so far as I know, I have seen him so many times, only one time I asked him, "What are you doing with them papers?" and he said, "I am delivering them."

Q. Did you ever see him deliver those papers to a news stand? A. Yes, sir.

Q. Did you ever see him make sales of those papers to a customer? A. Yes, sir.

(Testimony of Solly Epstein.)

Q. About how many papers do you estimate he was carrying at the time you spoke to him?

A. Well, the last time I saw him he had about fifty papers, old ones and new ones.

Q. About how many times have you observed Mr. Relis about the city delivering these Jewish newspapers?

A. Oh, I would say anywhere from a year to two years. [768]

Q. Is Mr. Relis still occupying a corner at Fifth and Spring? A. Yes, sir.

Q. Did you ever take him off that corner for his activities in distributing Jewish newspapers and for being off the corner? A. No, sir.

Q. (By Mr. Compton): Did you ever at any time give any instructions to Mr. Relis concerning the time he was to spend on his corner?

A. No, sir. [769]

Q. (By Mr. Compton): Mr. Epstein, how long have you been district manager in the territory that you have described?

A. About twelve years.

Q. Do you give an instructions to corner men about how long they should stay on the corner?

The Witness: No, sir.

Q. (By Mr. Compton): You do not give them any such instructions? A. No, sir. [771]

Q. (By Mr. Compton): Mr. Epstein, are you a member of any labor organization?

A. Yes, sir. The Los Angeles Newspaper Guild.

(Testimony of Solly Epstein.)

Q. Is that an affiliate of the C. I. O.?

A. Yes, sir.

Cross Examination

Q. (By Mr. Mouritsen): How do you know it belongs to the C. I. O., Mr. Epstein?

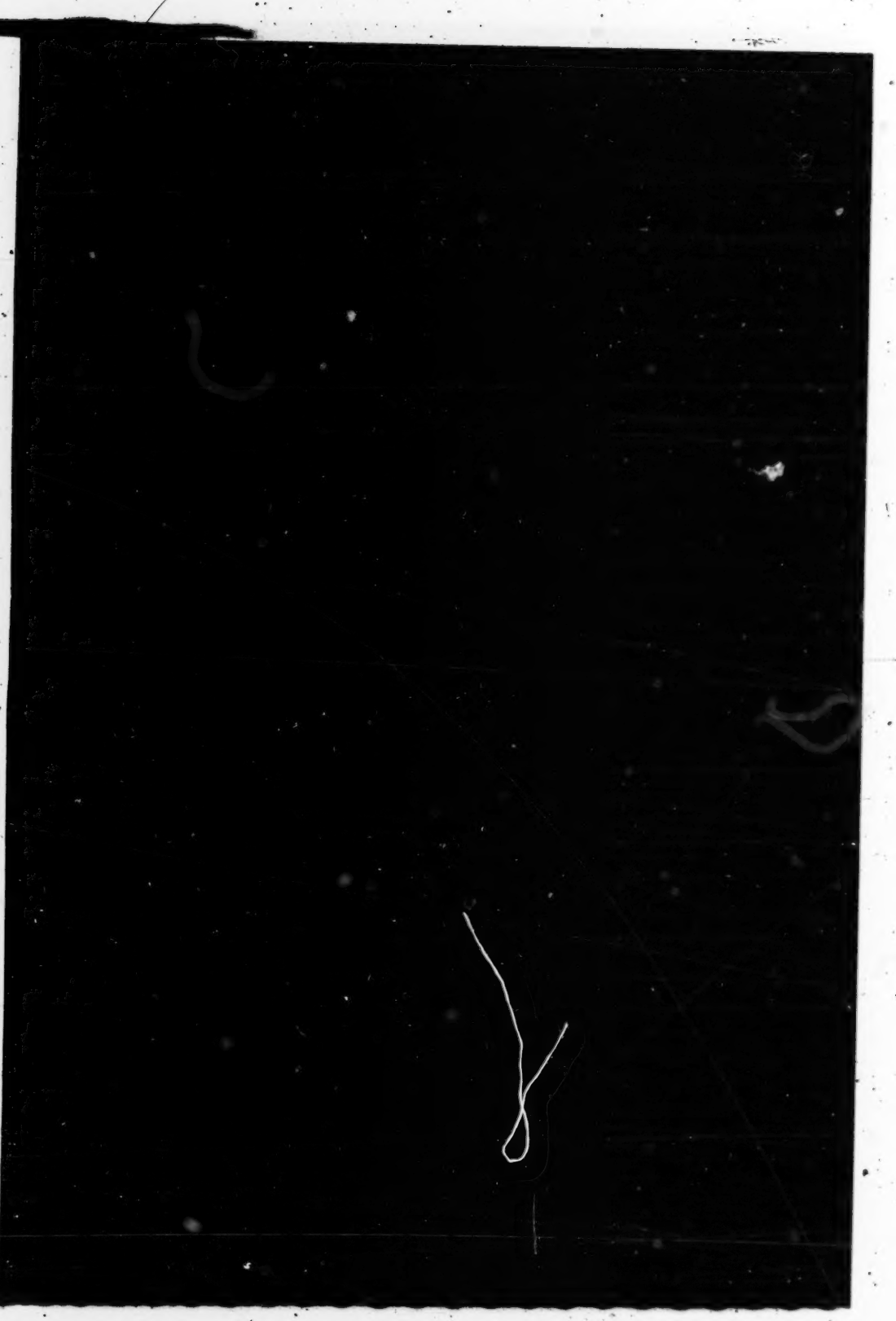
A. Well, my card says that—I think. I don't know for sure. I think the card does. (Producing document.) Yes, sir.

Q. And that is the information upon which you base your conclusion? A. That is right.

Q. That it is affiliated with the C. I. O.? [772]

Mr. Cosgrove: May it be stipulated that the testimony of Solly Epstein given this morning has no application to the Los Angeles Times case?

Mr. Mouritsen: It may be so stipulated. [773]



Nos. 10112, 10114, 10115, 10123

United States
Circuit Court of Appeals
For the Ninth Circuit.

No. 10112.
HEARST PUBLICATIONS, INCORPORATED,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10114.
STOCKHOLDERS PUBLISHING COMPANY, INC.,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10115.
HEARST PUBLICATIONS, INCORPORATED,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10123.
THE TIMES-MIRROR COMPANY, a corporation,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record
In Four Volumes
VOLUME III
Pages 981 to 1475

Upon Petitions for Review and Enforcement of Orders of the National Labor Relations Board

ROTARY COLORPRINT, 590 FOLSOM ST., SAN FRANCISCO

Monday, June 17, 1940.

Met, pursuant to adjournment, at 9:30 o'clock a. m. [776]

MORRIS KLEIN

called as a witness by and on behalf of the Respondent, the Los Angeles Evening Herald & Express, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Compton): What is your address, Mr. Klein? A. 2623 West Boulevard.

Q. What is your occupation?

A. I sell newspapers at Second and Hill.

Q. How long have you been engaged in selling newspapers at Second and Hill?

A. At Second and Hill itself about three years. I was at Second and Broadway since 1933.

Q. What newspapers do you sell, Mr. Klein?

A. Well, the main newspapers are the Evening Herald and Express and the Daily News, which is the Evening News.

Q. Do you sell any of the morning papers? [778]

A. Yes, the Times and Examiner, and formerly the Morning News.

Q. Do you sell any papers in addition to those?

A. Yes, I sell the People's World and I used to sell the Ham and Eggs until it ceased publication.

(Testimony of Morris Klein.)

Q. Do you sell any magazines?

A. Yes. Liberty, Post, Colliers, and Look.

Q. Do you sell the Mid-Winter Edition of any of the Newspapers?

A. I sell the Mid-Winter Edition of the Times when it comes out, and I also handle folders and post cards when they come out the first of every year.

Q. Do you have any assistants on your corner?

A. Yes. I have two youngsters that work for me after school.

Q. How do you pay them, Mr. Klein?

A. My corner is a funny proposition. I have a delivery route, see, and I have one boy to cover my corner while I deliver, and I have one boy in traffic that works two hours for me, and I pay him thirty-five cents an hour. In other words, it just about covers what he sells in traffic.

Q. How do you pay your relief man, Mr. Klein?

A. Pay our relief man according to the hours he works. I pay him thirty cents an hour. He sells about thirty cents an hour of papers, so I usually give him about thirty cents an hour. [779]

Cross Examination

Q. (By Mr. Mouritsen): These copies of the Times, Examiner and News that you sell, they are just a few copies left over from the morning boys, isn't that right? A. Yes, sir.

Q. And you sell approximately how many of those copies a day?

(Testimony of Morris Klein.)

A. Well, sometimes I sell two of each a day, and sometimes I don't sell any. Two of each, about the most.

Q. And about how many copies of the Evening Herald and Express on an average do you sell a day? A. I should say about 390.

Q. And the News?

A. The News ranges between 200 and two and a quarter.

Q. Do you receive a check from the Herald and Express? A. No, sir.

Q. Or from the News? A. No, sir.

Q. Do you have any other boys on that spot other than the two you have mentioned?

A. Well, I have the relief man every once in a while that I mentioned before.

Q. Who is your Herald and Express district manager? A. Joe Woods. [780]

Q. (By Mr. Mouritsen): As a general practice, what papers do you hold in your hands and arms while you are operating during the day?

A. I hold a Herald and the News in my hands.

Q. (By Mr. Mouritsen): How do you display those papers?

A. Well, the system I work with, I am impartial. I hold the Herald on the outside and the News on the inside, as they are the larger paper. I don't give any display to any particular paper. I just hold them both under my arm.

(Testimony of Morris Klein.)

Q. Mr. Klein, while you are making deliveries, is it necessary that you keep your corner covered with your relief man?

A. Well, it is the best practice. Of course, there is no compulsion, but if you don't cover it the best you can with your relief man, it is to your own regret, because customers will pass through you. [781]

Redirect Examination

Q. (By Mr. Compton): Are you at present a member of the Newsboys Union? A. Yes, sir.

Q. Did you ever hold office in the Newsboys Union? A. Yes.

Q. What was that office?

A. I was first president and—no, secretary, president, and a member of the board of directors.

Recross Examination

Q. (By Mr. Mouritsen): Mr. Klein, the Newsboys Union is affiliated with the CIO, isn't if?

A. Yes.

Q. During what period were you president of the Newsboys Union?

A. I can't say exactly, but I was third president of the union, the third term, third administration.

Q. Was that during the year 1937?

A. Approximately during the year 1937.

Q. While you were president, you had a number of conferences with the representatives of the

(Testimony of Morris Klein.)

A. Yes, I did have conferences.

Q. And did the representatives include representatives of the Examiner?

A. No. At the time I talked to the Evening Herald and Express, I only talked to representatives of the Evening Herald and Express. In other words, we talked to different representatives at a time. Yes, there was one meeting where we did have all the representatives of all the papers. That was a meeting in Mr. Keeler's office at the Evening Herald and Express, in which representatives of all papers were present.

Q. Will you name those other papers?

A. As well as I can remember, Mr. Logan from the Examiner, Mr. Harrison and Mr. Keeler and Mr. Dunsmore from the Herald and Express, and Mr. Bob Smith from the News. I don't believe the Times was represented. I am not sure.

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony of the witness Morris Klein, with the exception of the testimony that he gave relating to conferences while president of the Newsboys Union with representatives of the [783] newspapers, has no application to the Times Mirror case?

Mr. Mourtisen: With the exception of that por-

tion of his testimony relative to the affiliation of the organization.

Mr. Cosgrove: With the C.I.O., yes.

Mr. Mouritsen: Yes, that is so stipulated.

HARRY PLOTKIN

recalled as a witness by and on behalf of the Respondent, the Evening Herald and Express, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Hamblin) When you testified here before, Mr. Plotkin, I believe you stated you were district manager for the Los Angeles Evening Herald and Express? A. That is correct.

Q. Will you state again what is your district?

A. Where my territory is?

Q. Yes.

A. My territory runs from 54th to Manchester and from Broadway to Crenshaw.

Q. Are you acquainted with a newsboy named Sam Kahn? A. Yes. [784]

Q. What corner does he sell papers from, if you know?

A. At Florence and Broadway.

Q. Is that within the territory you have just described? A. Yes.

Q. Now, for your information, Mr. Plotkin, Sam Kahn testified in this proceeding that—Sam Kahn

(Testimony of Harry Plotkin.)

testified in this proceeding on Friday, June 14, and I want to refer you to a conversation to which Mr. Kahn testified on that day. He referred to a conversation between you and himself which took place about two years or a little over ago on the corner of Florence and Broadway, and he testified with reference to the matter of hours on the corner as follows:

"Q. I am reading from Page 643, line 14, of the transcript, stating at Line 16.—"Do you remember the exact words that Mr. Plotkin used on that occasion?

"A. Well, as far as I can remember, he said that my hours were from ten in the morning until eight in the evening. I know I have to stay there until eight o'clock, no later.

"Q. Are those the exact words he used?

"A. Well, I don't remember whether they were the exact words, but I know that he told me to stay there until eight o'clock."

Do you recall having a conversation with Sam Kahn about two years, or thereabouts, ago on the corner of Florence and Broadway at or about the time he commenced to sell papers on that corner? [785]

A. Not at the corner of Florence and Broadway, no, sir.

Q. Do you recall any conversation or discussion with Mr. Kahn at the time he commenced to sell papers within your district? A. Yes, sir.

(Testimony of Harry Plotkin.)

Q. Did you state to him at that time in substance and effect that his hours were from ten o'clock in the morning until eight in the evening?

A. No, sir.

Q. Did you state to him in substance and effect that he had to stay there until eight o'clock at night?

A. I didn't state to him that he had to stay there until eight o'clock in the evening.

Q. Do you recall the conversation or discussion that you had with him at the time he commenced to sell papers within the district you have described?

A. Quite clearly, yes.

Q. (By Mr. Hamblin) Do you recall where this conversation took place?

A. At 5514 South Figueroa, the Herald branch.

Q. And about when was that conversation? [786]

A. The morning that he came down on the truck with the papers to take over the corner.

Q. About how long ago was that?

A. Well, that I couldn't state definitely. I don't——

Q. Well, can you state approximately?

A. Possibly, approximately two years ago, or somewhere in the neighborhood of that.

Q. Who was present at the time?

A. Sam Kahn and myself.

Q. Will you relate what conversation took place at that time and place?

A. Well, he was—he came out on the truck—I would like to state that Joe Woods called me one day

(Testimony of Harry Plotkin.)

and asked me if I had a corner open—he had a friend of his that he would like to sell papers, so at the time there wasn't anything open; all the corners were filled.

So I told him the first corner that was open I would be glad to get in touch with him and have the second man come out. So it happened at that morning there was a corner available, so he sent Sam Kahn out with the papers on the truck. So, I generally—at that time I was working from 9:30 in the morning, or when the first edition came out, so he rode out with me to the corner and I explained about how many papers that the corner generally sold, and naturally I took it for granted he knew what time the boys stayed on the corners, thinking that he [787] had been selling papers uptown, so I explained to him that the man that had been selling papers there previously generally stayed there until eight o'clock in the evening if he had papers; if he didn't he went home when he sold out.

And that was all the conversation in regard to what hours he had to stay. And knowing that he knew what time the first edition came out, being as he rode out with the truck, I didn't have to tell him what time to be on the corner or anything. [788]

Q. (By Mr. Hamblin) Mr. Plotkin, will you repeat the conversation you had with Mr. Kahn at the time and place mentioned, giving us only what you said on that occasion and what Mr. Kahn said, and leaving out anything else?

(Testimony of Harry Plotkin.)

A. Well, I just simply told him that he—I never made any reference to the time that he should come to work, because I took it for granted.

Q. That is the sort of thing that——

A. (Interrupting) I never mentioned what time he should come to work, and I told him that the man that sold papers there previously stayed there as a rule until eight o'clock, if he had papers to sell.

Q. Now, is that all you said to Mr. Kahn and all that Mr. Kahn said to you on this occasion?

A. In regard to hours, yes.

Q. (By Trial Examiner Kennedy) Did you say you did or did not mention what time he should come to work?

A. I did not mention what time he should come to work.

Q. Then you are telling us what you did not say. We are [789] asking you for what you did say.

A. Oh.

Q. (By Mr. Hamblin) Mr. Plotkin, do you recall an occasion in or about August, 1939, when you refused further to sell papers to Sam Kahn?

A. Yes, I do.

Q. Did you have any conversation with Mr. Kahn at or about that time, with reference to that subject?

A. Yes.

Q. Where did the conversation take place?

A. On the corner of Florence and Broadway.

Q. And who was present?

A. Sam Kahn and myself.

(Testimony of Harry Plotkin.)

Q. Will you state what the conversation was, that is, confining yourself to what you said and what Mr. Kahn said?

A. Well, I told Sam Kahn that I would refuse to supply him with papers any more, and he wanted to know why, and I told him that every time I came around with papers, or rode by, why, invariably he was not to be seen on the corner, and consequently in the evening, why, I would have difficulty in collecting the bill for the papers, and I just couldn't tolerate it any more, so I told him that if he couldn't pay his bill in the evening I would have to refuse to supply him with papers.

Q. I want to refer you once again to the conversation with [790] Sam Kahn when he first commenced to sell papers. Did you in the course of that conversation give Mr. Kahn any instructions as to the time when he should appear on his corner?

A. No, sir.

Q. Are you acquainted with a newsboy named David Kadesh? A. Yes, sir.

Q. Where does he sell papers?

A. At Manchester and Broadway.

Q. By the way, Mr. Plotkin, when did you become manager of the district that you have described? A. In June of 1932.

Q. And Manchester and Broadway is within that district where that corner is? A. Yes, sir.

Q. At the time you became district manager of this district in June of 1932, can you state whether

(Testimony of Harry Plotkin.)

or not David Kadesh was selling papers from that corner? A. He was.

Q. For your information, Mr. Kadesh testified in this proceeding on Thursday, June 13th. In the course of his testimony he mentioned a conversation with you which took place in the year 1939 at Broadway and Florence between yourself and Mr. Kadesh, and Mr. Kadesh's version of the conversation was as follows—I am reading from Page 453, commencing at Line 12: [791]

"Q. Will you tell us what was said at that time by yourself and by Mr. Plotkin?

"A. Well, I sold out the papers and I couldn't get any more at Figueroa and Manchester, and so I didn't have any. So I took the five minutes to eight street car and rode down to Florence and Broadway and about two minutes to eight Harry Plotkin came by there and he says, 'What are you doing over here so early?' So I explained to him that I sold out of papers and there was no use standing there on the corner until eight o'clock if I didn't have any papers to sell, so he got angry and started to give me the devil for it.

"Q. What did he say, Mr. Kadesh?

"A. Well, he said, 'You know better than to quit before eight,' and so he didn't believe me, and he rode down there with a car to see if I had any papers, to see if I left any papers on the corner and went away before time. Well, when he got there there wasn't any papers."

(Testimony of Harry Plotkin.)

Do you remember having a conversation with Mr. Kadesh at approximately that time and place?

A. No, sir, I do not.

Q. Do you remember on any occasion stating to Mr. Kadesh in substance or effect, "You know better than to quit before eight o'clock?"

A. No, sir.

Q. Did you during the year 1939 have a regular route which [792] you followed in checking in newsboys or in making collections?

A. The same as I have right now.

Q. Will you explain what that route was and the approximate time when you normally are at David Kadesh's corner?

The Witness: I believe I stated in my testimony previously that I generally start in between 6:15 and 6:30 on my collections and wind up in the neighborhood of five minutes to eight or five minutes after eight at the corner of 54th and Crenshaw, which is about six or seven miles from the corner mentioned in that conversation of Mr. Kadesh. I generally get to Mr. Kadesh's corner in the neighborhood of 7:00, five minutes of 7:00, ten minutes of 7:00, or anywhere up to a quarter after 7:00, and that is the last time I see him until the next day.

Q. Do you recall any occasion when you were collecting at Mr. Kadesh's corner at two minutes of 8:00, or approximately at that time, during the year 1939?

A. Not collecting there, no, sir.

Q. Can you state approximately where you are at

(Testimony of Harry Plotkin.)

two minutes to 8:00 or around eight o'clock in the normal course of your routine? A. Yes. [793]

Q. Will you so state?

A. I am generally anywhere from Slauson and Western up to Slauson and Crenshaw, 54th and Crenshaw, within one of those three corners at that time.

Q. Approximately how far is that from the corner of Manchester and Broadway?

A. Well, I should say a good five miles.

Q. Since you have been district manager of your present district, have you at any time refused to sell the Los Angeles Evening Herald and Express to David Kadesh? A. Not at any time.

Q. Have you at any time since you have been district manager of your present district threatened to refuse to sell Dave Kadesh further papers?

A. Never.

Q. I want to refer you to a conversation testified to by Mr. Kadesh. The conversation took place the latter part of 1939, at the corner of Manchester and Broadway, between yourself and Mr. Kadesh. His version of the conversation, omitting those portions that were stricken out, was as follows, and I am reading from Page 466, Line 10, of the transcript:

"But you don't remember what else he said?

"A. Yes. He told me the next time it happened that I got a couple of days layoff." [794]

Do you remember saying to Mr. Kadesh in substance or effect that the next time it happened he

(Testimony of Harry Plotkin.)

would get a couple of days layoff? Can you answer that question yes or no? A. No, sir.

Q. Do you remember making, in substance or effect, a statement to Mr. Kadesh such as he has testified to? A. No.

Q. Did you ever make such a statement?

A. Not to Dave Kadesh, no.

Cross Examination

Q. (By Mr. Mouritsen) Mr. Plotkin, before answering this last question regarding speaking to Mr. Kadesh about a layoff I note that you hesitated and smiled somewhat. Did you ever have a conversation similar to that in some way with Mr. Kadesh?

A. As far as Dave Kadesh is concerned, I would just like to state that if every man was as conscientious and as hard a worker as Dave Kadesh everything would be a pleasure; so there [795] is your answer to Dave Kadesh as far as I am concerned.

Q. I believe you stated in your testimony regarding Sam Kahn that he came out to the spot on a truck?

A. Came out to the branch office, yes, sir.

Q. And whose truck was that?

A. The Evening Herald's truck.

Q. Do the newsboys from time to time ride on that truck going to or from their spots?

A. It just happens—well, I will have to explain that to you if you will let me.

Q. Suppose you answer it either yes or no and then make your explanation.

(Testimony of Harry Plotkin.)

A. Well, it can be answered yes or no, both ways.

Q. Well, they do and they don't; is that right?

A. They do and they don't.

Q. All right. Now, you explain just what you mean.

A. Well, in several of the cases the boys that live around the downtown area, to save car fare they will come out with the papers in the morning on the truck, to save car fare. That is the only time. They are supposed, as a rule, to come out on the street car to their corners, or get out whichever way they can, but if they live near the Herald and they have a chance to save seven cents car fare they come out on the truck and they will let them ride out with them. That is all.

Q. And on occasions do they sometimes return to their homes, [796] where they live downtown, by the same means?

A. No, I don't know which way they go home because I very seldom see them leave their corners.

Q. In your direct examination by Mr. Hamblin you have given us all of the conversation that you recall having had with Red Kahn about the time he started to sell on that spot, is that right?

A. Yes, that is correct.

Redirect Examination

Q. (By Mr. Hamblin) Mr. Plotkin, will you describe the truck on which Sam Kahn rode to his corner, for me? A. To his corner?

(Testimony of Harry Plotkin.)

Q. Yes. Well, I will amend that—rode to the branch office.

A. Well, sometimes it is one of those little transportation trucks and sometimes it is a Ford touring car, whatever they happen to send out with the papers.

Q. Is it or is it not a fact that the truck makes several trips a day to the branch office?

A. Oh, yes, numerous trips.

Q. When does it make the last trip in the day to the branch office?

A. Well, I imagine in the neighborhood of 5:00 or 5:30.

Q. And after delivering the papers to the branch office, [797] after the last trip, what does the truck do?

A. Well, it is through for the day.

Q. By the way, Mr. Plotkin, are you a member of any labor organization? A. Yes.

Q. What organization?

A. The Los Angeles Newspaper Guild; a member of the American Newspaper Guild, and associated with the C. I. O.

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony of Harry Plotkin given this morning has no application to the Times-Mirror case?

Mr. Mouritsen: It may be so stipulated.

Mr. Hall: May the same stipulation be made with reference to the Los Angeles Examiner?

Mr. Mouritsen: It may be so stipulated. [798]

PATRICK COMORRE

called as a witness by and on behalf of the Respondent, the Evening Herald and Express, and being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Compton) Mr. Comorre, what is your present occupation?

A. Well, with the exception of relieving the kid at Fifth and Spring several hours a day, why, I am unemployed.

Q. Relieving the kid at Fifth and Spring?

A. That is right.

Q. Who is that?

A. That is my brother-in-law.

Q. What is his name? A. Henry Powers.

Q. At or about January 21, 1939, were you a member of the Grievance Committee of the Newsboys Union? A. Well, I was the organizer.

Q. You were the organizer?

A. That is right.

Q. Do you recall having a conversation on the corner of Fifth and Spring, at or about the date I have just mentioned, with any representative of the Los Angeles Evening Herald and Express concerning the occupancy by this man Powers of the corner at Fifth and Spring? [799]

A. Well, if it is the time he went to work there, yes.

Q. You do recall having such a conversation?

A. Yes.

Mr. Compton: Mr. Reporter, will you please mark

(Testimony of Patrick Comorre.)

this the Evening Herald and Express exhibit for identification next in order?

(Thereupon, the document above referred to was marked for identification as Respondent's Exhibit No. 5.)

Q. (By Mr. Compton) I will hand you a document entitled "Bill of sale," being Herald's Exhibit 5 for identification, and ask you to state whether or not you have ever seen that document before.

A. Yes, sir, I believe I have. [800]

Q. Isn't that the copy of the bill of sale you delivered to Mr. Gordon Norton on the corner of Fifth and Spring on or about January 21, 1939?

A. I dont' think I gave it to Mr. Norton; I think the boy there gave it to him.

Q. Which boy? A. Henry Powers.

Q. Your brother-in-law? A. Yes.

Q. Did you see Mr. Powers deliver it to Mr. Norton? A. Yes. I was there.

Q. Did you ever see the original of the bill of sale of which that purports to be a copy?

A. Well, yes, sir.

Q. As a matter of fact, weren't you instrumental in arranging the sale? [801]

The Witness: Well, naturally, being organizer of the Union, I was implicated in the—whatever the—you are referring to him not being able to get on that corner after he had purchased the corner?

Q. (By Mr. Compton) No. I asked you about

(Testimony of Patrick Comorre.)

the sale, Mr. Comorre. I said, weren't you instrumental in arranging the sale, the purchase of the corner from Mae Williams?

A. Well, I went with the group that was with the —witnessed the purchase of the corner.

Q. Will you state just what occurred? Will you describe how that was arranged, Mr. Comorre?

A. Well, you mean—now, what are you referring to?

Q. You say a group went some place and arranged the sale. Now, I want to know what happened at that time, when it was and what occurred.

A. Well, my understanding is that he would find out what time the corner was open, and that he was —he had been selling papers for the News at the Stadium, from Martinez, and he wanted to buy this corner.

Q. And how did he go to purchase the corner, Mr. Comorre?

A. Well, he—this woman, I believe that is her name there—it is my understanding that he knew her, and he asked her if she would sell him the corner. [802]

Q. Who was this woman, Mr. Comorre?

A. It was the daughter of the man that was selling papers there before.

Q. The man known as the blind man, on that corner? A. That is right.

Q. Do you know what had happened to the blind man? A. He had died.

(Testimony of Patrick Comorre.)

Q. He had died? A. That is right.

Q. And consequently that corner was, as you say, open? A. That is right.

Q. And did you go with Mr. Powers to discuss the purchase of the corner with Mae Williams?

A. No, I didn't.

Q. Do you know who went with him?

A. Oh, when the money was paid over, I was there.

Q. Oh, you were there. Where was that?

A. That was out at the sanitarium.

Q. What sanitarium?

A. Well, out here at the Olive View Sanitarium —not Olive View, but up in Glendale; it was the— the hospital.

Q. Was Mae Williams a patient there?

A. Yes, she was.

Q. You say she was the daughter of the blind man who had formerly sold papers on that corner? [803]

A. Well, according to her own statements.

Q. Do you know who prepared this bill of sale, Mr. Comorre? A. Carey McWilliams.

Q. Carey McWilliams. He is an attorney at law in the city of Los Angeles?

A. That is right.

Q. And you say you saw the consideration pass?

A. Yes, sir, I did.

Q. How much was paid for the corner, Mr. Comorre?

(Testimony of Patrick Comorre.)

A. $150, I believe. Not all in cash, but I believe that is—the full amount of it, that is what it amounted to.

Q. And on your recollection of the original of the bill of sale, would you say in your opinion that that is a true and correct copy of that bill of sale? A. Yes, I believe so.

Q. And that you believe is the copy of the bill of sale which either you or Mr. Powers delivered to a representative of the Los Angeles Evening Herald and Express on or about that date, on the corner of Fifth and Spring?

A. I believe so.

Mr. Compton: At this time I offer Herald Exhibit No. 5.

Trial Examiner Kennedy: Is there any objection?

Mr. Mouritsen: Objected to on the ground of lack of foundation, Mr. Examiner.

Trial Examiner Kennedy: Received. [804]

(Thereupon, the document above referred to was received in evidence and marked as Respondent's Exhibit No. 5.)

Q. (By Mr. Compton) Mr. Comorre, I will hand you Herald and Express Exhibit 6 for identification, being a note dated January 21, 1939, addressed "Dear Nick," and signed "Mae Williams" on the back of a receipt blank, and ask

(Testimony of Patrick Comorre.)

you to state whether or not you have ever seen that document before. A. Yes.

(Thereupon, the document above referred to was marked as Respondent's Exhibit No. 6 for Identification.)

Q. (By Mr. Compton) Do you know a man named Nickerson? A. I do.

Q. Was Mr. Nickerson—well, can you state at or about that time what Mr. Nickerson's occupation was?

A. Yes. He was selling papers there.

Q. On the corner of Fifth and Spring?

A. That is right.

Q. Do you know whether or not he was employed by the blind man? [805]

A. From my recollection, I think he was the relief man for the blind man—that is right.

Q. And will you state where and under what circumstances you saw this document Herald and Express Exhibit No. 6 for identification?

A. Where I saw it?

Q. Yes.

A. Well, it was presented, I believe, to—I mean I think Henry Powers—Harry Powers—or known as Harry Powers—gave this to Nickerson that particular morning, whatever it would be.

Q. That same morning?

A. Yes. To let him know that he had bought the corner.

(Testimony of Patrick Comorre.)

Q. Did you see Mae Williams write that note?

A. No, I didn't see her write the note.

Q. But you did see that note that morning?

A. I saw that note that morning, yes. That was the first time I saw it, when they refused to give Henry Powers the papers. That is when I came in on the picture and saw that note.

Q. Mr. Comorre, you state that you relieve on the corner of Fifth and Spring. Isn't it a fact that at least for the last month or so you have been selling papers regularly there every day in the late hours of the day?

A. In the evening, yes. I relieve in the evening. [806]

Q. Do you have any assistants there on that corner?

A. Do I have any assistants?

Q. Yes.

A. Well, most of the time Powers himself was there too. He works in the zone, or I work in the zone, or vice versa.

Q. Is there anyone else works that particular corner?

A. Once in a while when I am not there, or Powers is not there, why, my eldest boy works there; that is, in the zone.

Q. Have you ever, Mr. Comorre, asked the permission of any representative of the Herald and Express to work on that corner, or to have your boy work on the corner, or anything of that sort?

(Testimony of Patrick Comorre.)

A. Have I ever asked permission?

Q. Yes.

A. From the Herald and Express authorities?

Q. Yes. A. No, I have not.

Q. Mr. Powers puts on that corner whoever he desires, doesn't he?

A. Well, yes, for relief. I imagine so.

Cross Examination

Q. By Mr. Mouritsen) Mr. Comorre, at or about the time that Powers began selling on that corner, were you present at any conference or conversation that took place between Mr. [807] Powers and a representative of the Evening Herald and Express? A. I was.

Q. And was there more than one such conference?

A. Well, not that I was present at, no.

Q. Well, where did the one at which you were present take place?

A. At Fifth and Spring.

Q. Who was present?

A. A person by the name of Gus Georgan and Nickerson—a boy—the man that was selling papers there at that time, and Mr. Norton from the Express.

Q. Is that Gordon F. Norton?

A. That is correct.

Q. You were there?

A. Naturally, I was there.

Q. Was Mr. Powers present?

(Testimony of Patrick Comorre.)

A. Yes, Mr. Powers.

Q. Now, will you relate what occurred at that time and what was done and said by the people present?

A. Well, could I say why I was there and then tell you what happened?

Q. Well, in what capacity were you present?

A. As a representative of the Union.

Q. And had anything occurred prior to that time? A. Yes. [808]

Q. That caused you to be on that corner at that time?

A. That is right. That is why I was there.

Q. And what had occurred prior to that time?

Mr. Comorre, you just tell us what was done and said at this conference where Mr. Norton was present, and you and the other people you have named.

A. I should start at that corner, where we was out there?

Q. Yes, just tell us the conversation.

A. Well, I got there—how I happened to be there was that Mr. Norton—I am getting ahead of my story.

Q. You just tell us what was said and done at this conference and we will get the rest later.

A. All right. Well, it is pretty hard to get at the begin- [809] ning of it. Well, when we arrived at the corner Mr. Norton says, "What is the trouble here, Pat?" and I says, "Well, it seems to

(Testimony of Patrick Comorre.)

me this boy bought the corner and Solly Epstein refuses to give him papers."

Q. When you say "this boy," to whom do you refer? A. Henry Powers.

Q. Go ahead.

A. And I said, "What is the reason?" He said, "Well," he says, "Our policy is that we want the boys selling papers that know how to sell papers, and also clean-cut fellows to represent our papers. We don't want just any bum at all on the corners." And I said, "Well, if you look for yourself I think this boy is very clean and he looks like he could represent the paper well." And I said, "He has had some experience selling papers for Martinez at the Coliseum and also out at North Broadway on the News."

"Well," he says, "we got to be very careful who occupies this corner," and he said, "How long have you been in town, in California?" and I think he told him, "about two years;" and he asked him if he had any experience. He asked him questions I referred to, and if he could sell papers and how long he had sold papers and stuff like that, and then he took his name and address and he told Mr. Nickerson, he said, "Mr. Nickerson, we might as well let the boy work here; he looks all right; and I will get you another spot in my district. I [810] will find something for you."

Q. Now, is that about all the conversation that occurred?

(Testimony of Patrick Comorre.)

A. Well, he and I agreed that would be the best thing to do in order to not have any dispute about the boy occupying the corner, for the best interests of all concerned, including who I represented and who he represented, and so forth and so on.

Q. Prior to that time did you observe what the situation was on that corner with reference to any newsboy handling the paper? Do you understand?

A. No, I don't understand the question, Mr. Mouritsen.

Q. Prior to the time when you had this conversation did you see one or more boys selling papers on that corner for the Evening Herald and Express?

A. On that particular corner?

Q. Yes.

A. From time to time previous to that?

Q. Yes. A. Yes, I have.

Q. Now, how many boys were there selling papers on the corner there?

A. Well, Nickerson wasn't there. He was there most of the time, and whenever he wasn't available they would have someone else. The blind man would have someone else to relieve him. [811]

Q. I mean just a few days prior to this conversation. I will ask you if Mr. Nickerson wasn't selling papers on that corner.

A. Oh, yes, he was. During the time between

(Testimony of Patrick Comorre.)

the time the blind man died and the time the corner was turned over to Henry Powers, as far as I know. That is, I passed there practically every day and I saw him working there during that time, most of the time.

Q. (By Mr. Compton) Mr. Comorre, recalling your mind to that conversation between Mr. Norton—didn't Mr. Norton also say that it was necessary to assure himself that the man was [812] a good credit risk?

A. Yes, I believe so. I think he said that.

Q. And at this same time that this conversation took place, Herald Exhibit No. 5 was delivered, wasn't it? It was at this same time, wasn't it, the bill of sale?

A. Exhibit 5, the bill of sale?

Q. Yes, the bill of sale.

A. Well, that was probably the second time it was delivered. I understood it was delivered before.

Q. I mean this particular one.

A. At this particular time, that morning?

Q. Yes. A. I believe so.

Q. Mr. Powers, the purchaser of the corner under the bill of sale, Herald Exhibit No. 5, is still as far as you know occupying the corner?

A. Yes, he is.

Q. And as a matter of fact, you are relieving for him, aren't you? A. Well, yes. [813]

(Testimony of Patrick Comorre.)

Cross Examination

Q. (By Mr. L. B. Binford) Mr. Comorre, how do you determine what time you go to work as relief man?

A. How do I determine that?

Q. Yes.

A. Well, just whenever there ain't anyone else there to relieve him, he asks me to come down.

Q. I can't hear you.

A. It all depends. If there is someone else there I don't have to relieve. If there isn't, I do relieve.

Q. You go to work whenever you want to as relief man? A. Yes. Sure. [817]

Q. You have spoken about the C. I. O. Council. Now, what is that?

A. Well, the C. I. O. Council is a group set up of delegates from practically every C. I. O. union in this territory—Southern California.

Q. Does the Newsboys Guild have a representative on that council?

A. Yes, sir, they do. They did have. I suppose they still have. [822]

Mr. Compton: At this time, if the Examiner please, for the purpose of correcting the record of the testimony apparently based on a misapprehension of facts, the Board's attorney and the representative of the Newsboys Union and I have agreed upon a stipulation of fact which we will

(Testimony of Patrick Comorre.)

read into the record, designed to correct the erroneous testimony of previous witnesses.

Mr. Cosgrove: If the Examiner please, before you do that may it be stipulated, Mr. Mouritsen, that the testimony of the witness Patrick Comorre as given this morning, with the exception of the testimony relating to Board's Exhibit No. 4 for identification, and with the exception of the testimony given in response to questions asked by the Examiner, have no relation to the Times-Mirror case?

Mr. Mouritsen: And if there was any other—excepting also any other testimony going to the nature and activities of the organization at that time.

Mr. Cosgrove: Well, I did not think there was. I thought it was confined to your examination relating to this exhibit No. 4. But if there was any, that is also stipulated.

Mr. Mouritsen: Very well.

Mr. Cosgrove: These exclusions may also be stipulated.

Trial Examiner Kennedy: Proceed.

Mr. Compton: (Reading) "It is hereby stipulated and [823] agreed by and between the attorney for the Labor Board, the attorneys for the Los Angeles Evening Herald and Express Department, Hearst Publications, Inc., and by the representatives of the Newsboys Union, Mr. Comorre and Mr. Eley, that the testimony of W. J. Harrison

(Testimony of Patrick Comorre.)

concerning the date of the beginning of joint selling operations by newsboys of the News and of the Herald and Express was based on his recollection alone; that he had in his files no documents or data establishing that date, and had not attempted to refresh his recollection thereon prior to his testimony concerning the same; that his testimony, based on his recollection as aforesaid, was and is incorrect, and that his testimony concerning his belief that the joint selling operations were desirable by reason of a proposed change in prices of the two newspapers, was based on this misapprehension of the two dates, and was and is incorrect; that his attention was first drawn to the possibility of error in his testimony by the testimony of Milton Newman on Saturday, June 15, 1940; that he thereafter, and on Saturday afternoon, inquired and learned that the Stockholders Publishing Company, publisher of the News, had records indicating that joint sales first started on or about August 25, 1937; that it is his present belief that said joint selling operations started on August 25, 1937; that his records indicate that he first received knowledge of a proposed change in the price of the Herald and Express in [824] the early part of October, 1937; that he first received definite information that such price raise would go into effect on October 18, 1937; that the proposed price raise of the Herald and Express was publicly announced in the columns of that paper on October

(Testimony of Patrick Comorre.)

22, 1937; that the price raise actually did go into effect November 1st, 1937; that the testimony of other witnesses that the date of beginning joint operations was other than August 25, 1937; was based upon the same misapprehension and was and is incorrect; that the testimony of said W. J. Harrison and other witnesses so testifying regarding such dates may be deemed corrected in accordance herewith."

Mr. Mouritsen: That may be so stipulated.

Mr. Comorre: That may be so stipulated for the union.

Mr. Compton: I now have to offer an amendment to my own stipulation. The date when the first price raise—the date when the price raise was first publicly announced was not October 22 but October 21, 1937.

Trial Examiner Kennedy: That is agreeable, I take it?

Mr. Mouritsen: Yes, that is agreeable. [825]

GORDON NORTON

recalled as a witness by and on behalf of the respondent, the Evening Herald and Express, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination

Q. (By Mr. Compton) Mr. Norton, are you an employee of the Los Angeles Evening Herald and Express? A. No, sir.

(Testimony of Gordon Norton.)

Q. What is your connection with that organization?

A. I am a dealer for the Los Angeles Evening Herald and Express.

Q. And as such dealer, in what territory do you operate?

A. Roughly, between Figueroa and Western and Sixth and Twelfth in the city of Los Angeles.

Q. How long have you operated as such dealer?

A. Since September, 1936. [826]

Q. Will you state what occurred when you first entered into the occupation or entered into this dealership arrangement? Did you have a conversation with any person in the Los Angeles Evening Herald and Express? A. Yes, sir.

Q. And with whom?

A. Mr. Harrison, then and now circulation manager.

Q. Can you tell approximately what date you had such conversation?

A. In the early part of September, 1936.

Q. And where was that conversation?

A. At the Evening Herald and Express Building.

Q. Who was present at such conversation?

A. Mr. Harrison and myself. [827]

Q. Will you state as accurately as you can what you said to Mr. Harrison and what Mr. Harrison said to you during such conversation?

A. Mr. Harrison reminded me that one James

(Testimony of Gordon Norton.)

Potts was quitting the dealer business and asked me if I cared to take over the district, and I said that I did and I would.

Q. What, if anything, was said by Mr. Harrison or by you concerning the method of handling such dealership territory?

A. I asked Mr. Harrison how the territory was operated. He told me that I would receive my papers at a certain rate and would resell them at the stipulated Herald wholesale rate and that there would be an allowance for certain expenses in the district. I agreed to those terms and have operated under them.

Q. Now, you purchase your papers at a rate under the so-called established wholesale rate of the Herald, do you not? [828] A. That is right.

Q. And you resell to vendors in your district at the so-called established wholesale rate?

A. Yes, sir.

Q. And do you have any credit losses in your district? A. Yes, sir.

Q. Who assumes such credit losses?

A. I do.

Q. How do you make any profits on the dealership territory?

A. From the difference between the price I pay for the papers and the price at which I sell them.

Q. Who, if anyone, places corner boys in your territory?

(Testimony of Gordon Norton.)

A. Myself or the men who work for me and under me.

Q. How many employees have you working for you or under you?

A. I have one man who works under me as an assistant and one other who distributes the papers for me.

Q. Is any allowance made for you for the expenses on the salaries of these men?

A. Yes, sir.

Q. What is the allowance?

A. Approximately forty-seven dollars a week.

Q. Do you know of your own knowledge how that allowance is made? A. Yes, sir. [829]

Q. How is it made?

A. It is made in the form of checks from the Evening Herald and Express.

Q. Do those checks go directly to you or to your employees?

A. I get the checks from the cashier and distribute them to the men in my district.

Q. At or about the time you took over this [830] dealership territory or any time thereafter, did you have any discussion with Mr. Harrison concerning how and in what manner district men in your district should be compensated? A. Yes, sir.

Q. Do you recall when such conversation took place?

A. At the time we raised the price of the paper to five cents retail.

(Testimony of Gordon Norton.)

Q. That was about November, 1937?

A. That is right.

Q. Where did such conversation take place?

A. At the office of the Evening Herald and Express.

Q. Who was present?

A. Mr. Harrison and myself.

Q. Will you state what was said by Mr. Harrison and what was said by you?

A. I stated to Mr. Harrison that in view of the fact that the wholesale rate of the paper was to be changed to the boys, that my rate should be adjusted, and he told me to estimate what I thought my draw would be after the change, and we would try to arrive at some new rate so that we could establish it on that basis.

I then asked if he wanted to continue the arrangement of paying my helper and other assistants the same as it had been, or if he wanted to change it into a one check basis. He said, "no," that he thought it would be better if we continued it [831] just as it was and had been for years.

Q. Do you hire and fire the district men employed by you, Mr. Norton? A. Yes, sir.

Q. Do you know of your own knowledge what concern or person is listed on the records of the Social Security Board as the employer of these two particular district men? A. No, sir.

Q. Mr. Norton, why do you not pay these men by check yourself?

The Witness: Because of the bookkeeping that

(Testimony of Gordon Norton.)

would fall upon me if I did so. As long as the Herald is allowing me [832] a certain amount per week and I turn it over to the men eventually, I thought it would be better if the Herald paid them by check and therefore they would do the book-keeping and keep the records of the money that I spend.

Q. (By Mr. Compton) And that is the actual manner in which the men—the two district men concerning whom you have testified are paid?

A. That is right.

Cross Examination

Q. (By Mr. Mouritsen) What are the names of your district men, Mr. Norton?

A. I have one district man named Tony Bacigalupi.

A. That is right. I call him Tony. The other man who works for me merely distributes some papers for me, and his name is Joe Kanter.

Q. Now, you call Mr. Tony, your assistant, is that right? [833] A. That is right.

Q. Now, these allowances that you state you received are made in the form of checks that are paid to these two men, is that correct?

A. That is partially true.

Q. In other words, the Herald and Express turns over to you a check for Joe Kanter and one for Tony? A. That is right.

Q. Those are made out to Tony?——

A. Bacigalupi.

Q. Yes. That is right, Bacigalupi; and Joe Kanter, respectively? A. That is right.

(Testimony of Gordon Norton.)

Q. Now, Mr. Norton, you also have in your district a number of these so-called check men or wholesalers? A. Yes, sir.

Q. How are the checks that these men receive delivered to them, if you know?

A. By me or my assistants.

Q. The Herald and Express turns them over to you, and you in turn turn them over?

A. Yes, sir.

Q. And those checks are made out to the men to whom you deliver them, is that correct?

A. That is right. [834]

Q. How many such check men do you have in your district? A. Eight.

Q. Do you have any other check men in your district other than these check men who perform duties similar to those performed by check men?

A. Not that I know of.

Q. In other words, all of the men in your district who perform what might be called the wholesale operations receive checks from the Evening Herald and Express, is that correct?

A. No, that is not correct.

Q. Well, now, let's see. You have eight district men in your district, is that correct?

A. I have eight men, who are listed as wholesalers with us—that is, with the Evening Herald and Express.

Q. And you have no others in your district who perform duties similar to those performed by check men or wholesalers, is that correct?

(Testimony of Gordon Norton.)

A. I have boys who perform similar—who do—I don't understand your question exactly, so it is rather hard to tell you exactly what I mean in that case.

Q. Well, now, these so-called check men or wholesalers receive papers from Bacigalupi and Joe Kanter, is that correct? A. Yes. [835]

Q. And check men or wholesalers receive a number of papers that they themselves do not sell, but in turn go out to the other boys?

A. Yes.

Q. After the selling period then they collect from those boys and they return the money that they have collected from the other boys, together with the money they themselves have made from the sale of papers, turn that back to Bacigalupi and Joe Kanter? A. Yes.

Q. Now, do you have any other boys who perform such duties other than these eight that you have mentioned?

A. I have boys who do a similar type of occupation, yes, whatever you call it.

Q. Well, how many in addition to the eight?

A. I can't answer that exactly. A few.

Q. You have no idea of the number of such boys in your district?

A. If you want to take the time I will stop and think about it and give you a rough estimate of it. [836]

Q. (By Mr. Mouritsen) And when you spoke

(Testimony of Gordon Norton.)

of the established price regarding the Evening Herald and Express, what did you mean by that expression?

A. Do you mean the wholesale or the retail price?

Q. Well, Mr. Norton, you used the expression. Now I would like to know what you meant by it.

A. If I was using it in speaking of selling to the general public, I mean the advertised price and the price that has grown up by custom.

Q. And with reference to any other price?

A. If I mean the established wholesale price to the boys, I would mean the price to the boys for the papers that they buy from the Evening Herald and Express.

Q. And I believe you stated that the price was changed in [837] your district during—on or about November 1, 1937, is that correct? That is, the wholesale price? A. Yes, sir.

Q. Now, other than your work in this district, do you perform other or any duties for the Evening Herald and Express?

A. No other duties.

Q. You were present, were you not, at a conference that took place between representatives of the Newsboys Union, yourself, and one Mr. Nickerson, on or about January 21, 1939?

A. Yes, sir.

Q. That conversation took place in a district not your own; is that correct?

(Testimony of Gordon Norton.)

A. That is correct.

Q. It concerned the sale of papers on a corner not within your district? A. That is right.

Q. How did it occur that you took part in that conversation or that conference?

A. At the request of Mr. Harrison, Circulation Manager of the Evening Herald and Express.

Q. And you took the boy Nickerson there involved and gave him a corner in your district, is that correct? A. Yes, sir.

Q. Was that also at the request of Mr. Harrison of the Evening Herald and Express? [838]

A. No, sir.

Q. The checks that these newsboys—that you deliver to these check men or wholesalers are the checks of the Evening Herald and Express and not your own, isn't that correct?

A. That is right.

Mr. Mouritsen: And, Mr. Compton, will it be stipulated that the deductions for Social Security and Unemployment are made from the checks that these particular check men receive?

Mr. Compton: It will be so stipulated.

Mr. Mouritsen: And also from the checks received by Bacigalupi and Kanter?

Mr. Compton: It will be so stipulated.

Mr. Mouritsen: May we have a stipulation regarding the name of the employer registered with the Social Security, or will I have to get those?

Mr. Compton: That is quite correct; they are

(Testimony of Gordon Norton.)

on the Herald and Express payroll and they are so listed.

Q. (By Mr. Mouritsen) Did a man, a Mr. Blake, at one time act as your assistant?

A. Yes, sir.

Q. And during what period?

A. Well, it would have to be approximate. From 1938 to sometime in 1938—approximately a year.

Q. What was his first name, or his initials?

A. Jimmy Blake. [839]

Q. Jimmy Blake. Nothing further.

Redirect Examination

Q. (By Mr. Compton) Mr. Norton, it is my recollection that Mr. Mouritsen asked you a question which led you to say that the so-called wholesalers turn over to the district men the amount of money that they receive for the newspapers from the other boys and what they make. The newsboys turn over to the wholesalers only the wholesale price of the newspapers; isn't that correct?

A. That is right.

Q. And the wholesalers, in turn, turn over only the wholesale price of the newspapers which they purchase? A. That is right.

Q. And all the amounts that they make, or earn, they keep themselves, don't they?

A. I imagine so.

Mr. Cosgrove: If the Examiner please, may we stipulate [840] before the recess with Mr. Mourit-

sen, if it is agreeable that that testimony given by Mr. Norton this morning is not applicable to the Times case?

Mr. Mouritsen: It may be so stipulated.

Mr. Hall: May we have the same stipulation for the Los Angeles Examiner?

Mr. Mouritsen: Yes. So stipulated. [841]

Afternoon Session

(Whereupon, the hearing was resumed pursuant to recess, at 1:30 o'clock, p. m.)

MAURICE F. NICKERSON

called as a witness by and on behalf of the respondent, the Herald and Express, being first duly sworn, testified as follows:

Trial Examiner Kennedy: What is your full name?

The Witness: Maurice F. Nickerson.

Direct Examination

Q. (By Mr. Compton) What is your address, please, Mr. Nickerson?

A. 108 West First.

Mr. Compton: May I have the exhibits, Mr. Reporter?

The Reporter: If the Examiner please, the other reporter [842] has not returned yet, and he has the key to the reporter's room and the exhibits are in there, and I am not able to secure them at this time.

(Testimony of Maurice F. Nickerson.)

Mr. Compton: May I make a suggestion? Mr. Mouritsen I think will be prepared to stipulate that that note, Evening Herald and Express Exhibit No. 6 for identification, was actually received by Mr. Nickerson on the corner on the day this controversy took place about the sale of the corner, and that was the only purpose I called the witness for, was to identify that note.

Trial Examiner Kennedy: Then if you do not have to have the exhibits, we can go ahead.

Mr. Compton: I need him for no other purpose, if the Examiner please, except just to identify that note.

Trial Examiner Kennedy: The hearing will be in session.

Mr. Compton: If the Examiner please, counsel for the Board has agreed to stipulate that the note, being Evening Herald and Express Exhibit No. 6 for identification, was actually delivered to the witness on the corner of Fifth and Spring at or about January 21, 1939, and that the note, Evening Herald and Express Exhibit No. 6 for identification, may be received in evidence.

Trial Examiner Kennedy: That may be done, if it is so stipulated.

Mr. Compton: That is all, Mr. Nickerson. [843]

(Thereupon, the document above referred to was received in evidence and marked as Respondent's Exhibit No. 6.)

(Testimony of Maurice F. Nickerson.)

Trial Examiner Kennedy: Is there any cross examination?

Cross Examination

Q. (By Mr. Mouritsen) Mr. Nickerson, are you a check man for the Herald and Express?

A. No, sir.

Q. You do not receive a check from them?

A. No, sir.

Q. Nor from the Daily News?

A. No, sir.

Q. I notice you are wearing a change apron. Did you receive that from the district manager of the Evening Herald and Express?

A. The apron?

Q. Yes. A. Yes.

Q. Upon what corner do you now operate?

A. Seventh and Alvarado.

Q. Who put you there? [844]

The Witness: Well, the Herald and Express.

Q. (By Mr. Mouritsen): That is Gordon Norton, is that right? A. No. [845]

Q. (By Mr. Mouritsen): What specific person connected with the Evening Herald and Express put you on that spot? A. Mr. Harrison.

Q. Circulation manager? A. Yes, sir.

Redirect Examination

Q. (By Mr. Compton): Mr. Nickerson, what time of the day do you customarily go on your corner? A. 9:30.

Q. And how late do you stay there ordinarily?

[846]

(Testimony of Maurice F. Nickerson.)

A. A quarter of eight; 7:30 or a quarter to eight.

Q. And you testified you don't receive any check from the Herald? A. No, sir.

Q. And none from the News? A. No, sir.

Q. That change apron which you are wearing, did you pay anything for that? A. No, sir.

Q. Was it given to you without any charge or cost? A. Yes, sir.

Q. Is it a convenience to you?

The Witness: Oh, certainly.

Q. (By Mr. Compton): And you have no objection to using it? A. No, sir.

Q. Have you had more than one change apron?

A. Several.

Q. You have never paid for any of them, have you? A. No, sir.

Q. As a matter of fact, you ask for them, don't you, Mr. Nickerson? A. Yes, sir.

Q. You sell the Evening Herald and Express?

[847]

A. Yes, sir.

Q. And the News?

A. The Daily News, Evening News.

Q. Do you sell any other newspapers?

A. When the Ham and Eggs was going I sold those.

Q. Do you sell any magazines?

A. Yes, magazines.

Q. What magazines do you sell?

(Testimony of Maurice F. Nickerson.)

A. Liberty, Post, Colliers and Look.

Recross Examination

Q. (By Mr. Mouritsen): Mr. Nickerson, how do you display the copies of the Herald and Express and the News that you handle? [848]

A. Well, I have two racks for the News and a Herald box to put the Heralds on and then I hold the others under my arm.

Q. Will you describe with more particularity the manner in which you hold them under your arm and their respective positions?

A. Well, I keep three or four of the News folded under my arm and the Heralds.

Q. The main spot boy on your corner is Philip Spampinato, is he not? A. Yes, sir.

Redirect Examination

Q. (By Mr. Compton): Mr. Nickerson, how long have you been on the corner where you are presently?

A. January 30, 1939, I come there.

Q. With what persons connected with the Los Angeles Evening Herald and Express did you discuss the matter of going on that corner, if any?

A. Mr. Norton.

Q. Did you ever at any time have any conversation with Mr. Harrison concerning that matter?

A. Well, yes, Mr. Norton sent me down there.

Q. Mr. Norton sent you down there?

A. Yes. [849]

(Testimony of Maurice F. Nickerson.)

Q. And that corner is in Mr. Norton's district, isn't it? A. Yes, sir.

Recross Examination

Q. (By Mr. L. B. Binford): Mr. Nickerson, these two racks that you speak of, they were furnished you by the News? A. Yes, sir.

Q. And what do you use them for?

A. For the News paper.

Q. To display the paper, isn't it?

A. Yes.

Q. It is a convenience to you? A. Sure.

Q. (By Mr. L. B. Binford): Did you pay anything for those racks to the News?

A. No, sir. [850]

Q. They were furnished you without any cost to you at all? A. Without any cost.

Q. And do they help you sell your papers?

A. Yes, sir.

Recross Examination

Q. (By Mr. Mouritsen): Mr. Nickerson, as a matter of fact, those racks were already on the corner when you came there, weren't they?

A. No, not these two that I have now They are new ones.

Q. Were they given to you by a News district manager?

A. No, by the man that brings the News around.

Q. Do you know his name?

A. At that time it was Andy. I don't know his last name.

(Testimony of Maurice F. Nickerson.)

Q. For the purpose of refreshing your recollection, was it Andy Barragan?

A. I wouldn't know his last name, sir.

Q. Who is your present News district man?

A. I don't know his name. [851]

Mr. Cosgrove: Will it be stipulated, Mr. Mouritsen, that the testimony of the witness Maurice Nickerson is not applicable to the Times-Mirror case?

Mr. Mouritsen: It may be so stipulated.

Mr. Mattson: I assume the same stipulation Mr. Cosgrove asked for can apply to the Examiner as well?

Mr. Mouritsen: That may be so stipulated.

WILLIAM J. HARRISON

recalled as a witness by and on behalf of the respondent, the Evening Herald and Express, and having been previously duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Compton): Mr. Harrison, you have previously testified, haven't you?

A. I have.

Q. And gave your name and address?

A. I did.

Q. How long have you been connected with the newspaper business, Mr. Harrison?

(Testimony of William J. Harrison.)

A. About forty-three years.

Q. And your present occupation is circulation manager of the Los Angeles Evening Herald and Express? A. That is true.

Q. How long have you been a circulation manager? [852] A. About thirty-six years.

Q. How long have you been circulation manager of the Los Angeles Evening Herald and Express?

A. Over twenty-eight years; near twenty-nine.

Q. At the time you first went with the Los Angeles Evening Herald and Express who was the owner of that newspaper?

A. Guy B. Barham.

Q. (By Mr. Compton): Mr. Harrison, do you belong to any [853] associations or organizations having to do with circulation matters?

A. Two.

Q. What are they, please?

A. The International Circulation Managers Association and the California Circulation Managers Association.

Q. How long have you been a member of the International Circulation Managers Association?

A. Well, about thirty-four years.

Q. How long have you been a member of the California Circulation Managers Association?

A. Since its inception.

Q. When was that?

A. That was in 1916, it was organized. I was its first president in 1919.

(Testimony of William J. Harrison.)

Q. Do you now hold or have you ever held office in the International Circulation Managers Association? A. I have not.

Q. Mr. Harrison, as Circulation Manager of the Los Angeles Evening Herald and Express, have you had occasion to determine the number of newsboys selling the Los Angeles Evening Herald and Express in the city of Los Angeles? A. Yes.

Q. On how many occasions have you done that?

A. Two occasions. [854]

Q. Will you please state approximately the date of the first survey? A. 1934.

Q. And will you state the occasion for such survey?

A. It was requested by the NRA, the information supplied on a blank provided for that purpose from the department under the direction of Hugh M. Johnson. I think Johnson was the name, General Johnson.

Q. Was that survey made by your department?

A. It was.

Q. Was it made under your direction?

A. Yes, sir.

Q. When was the most recent survey made by your department?

A. A survey that was completed in 1940, March, 1940.

Q. Mr. Harrison, were you in the court room during the time Mr. Patrick Comorre was on the stand testifying as to his estimate of the number

(Testimony of William J. Harrison.)

of newsboys selling the Los Angeles Evening Herald and Express in the city of Los Angeles?

A. I was.

Q. Did you hear his testimony?

A. I did.

Q. Do you recall his estimate of the number of such newsboys?

A. I think Mr. Comorre testified that there were probably some six hundred and fifty more than the number set forth in [855] his petition of approximately 230.

Q. Mr. Harrison, based on your knowledge of circulation matters generally, and on your experience in the preparation of the two surveys mentioned, will you state what is your present estimate of the average number of newsboys selling the Los Angeles Evening Herald and Express in the city of Los Angeles at this time?

A. Between 2200 and 2500.

Q. (By Mr. Compton): Mr. Harrison, do you keep and maintain, or was there kept and maintained in your department any record of the number of newsboys engaged in the selling of the Los Angeles Evening Herald and Express?

A. None at all beyond an occasional survey.

Q. And the survey that you mentioned, does that consist of numbers only?

A. Numbers only.

Q. In other words, you keep and maintain no records showing the names of these persons?

(Testimony of William J. Harrison.)

A. None at all.

Q. You do keep and maintain a payroll record of persons receiving checks from the Los Angeles Evening Herald and [856] Express, do you not?

A. We do.

Q. And it was from that payroll record that the list of names set forth in Board's Exhibit No. 3 pertaining to check men was obtained?

A. It was.

Q. And on that payroll the names of the wholesalers and the amount paid them per week appears?

A. It does.

Q. Mr. Harrison, there has been considerable testimony concerning display cards. Were you in the courtroom during this testimony?

A. I was.

Q. You are familiar generally with what the witness has testified concerning display cards?

A. I am.

Q. Will you state if you know how long the use of such display cards has been in existence in the Los Angeles Evening Herald and Express.

A. Since about 1920.

Q. What department is charged with the duty of distributing those placards?

A. The Circulation Department.

Q. That is your department?

A. My department.

Q. Can you state the purpose of said placards?

[857]

(Testimony of William J. Harrison.)

A. To advertise features and events that we expect to specialize on.

Q. What, in your opinion, is the effect of the use of such display cards?

A. I am convinced that the use of those cards has considerable to do with the increase in circulation of the holding of circulation. And the general acquaintance of our readers with new features that we are about to begin in the paper.

Q. (By Mr. Compton): Mr. Harrison, in your opinion does the use and display of these cards by corner men assist them in selling newspapers?

A. I am quite sure it does.

Q. Who bears the cost of the preparation of those cards, Mr. Harrison? [858]

A. The Evening Herald and Express.

Q. Is any charge made to any carrier or any other person for the use of those cards—pardon me, not carrier, but any newsboy or any other person, for the use of those cards?

A. None whatever.

Q. In your experience since the use of the cards started in 1920, have you ever received in your department direct or through any of your employees a complaint from any newsboy about the use of these cards? A. I have not.

Q. Will you state what instructions, if any, are given by you to the members of your department concerning the display of those cards by newsboys?

(Testimony of William J. Harrison.)

The Witness: Mr. Compton, the practice of using these cards has continued since 1920, which has become a fixed habit with the newsboys and members of the circulation department to take them out, distribute them and display them, and no instructions are necessary, or have been for [859] years.

Q. (By Mr. Compton): Mr. Harrison, recalling your attention back to the first part of your testimony concerning the number of newsboys, you testified that in your opinion the number of newsboys selling the Los Angeles Evening Herald and Express within the city limits of Los Angeles at the present time was between 2200 and 2500.

A. That is true.

Q. Does that figure include carriers?

A. It does not.

Q. Does it include news stands?

A. It does not.

Q. In other words, that estimate does include only so-called corner boys? A. That is true.

Q. Does that figure include bootjackers?

A. No, it does not. Only regularly covered by part-time or full-time newsboys.

Q. It does not include temporary or casual newsboys? A. It would not.

Q. Mr. Harrison, you were in the courtroom this morning, [860] were you not, during the time which Mr. Gordon Norton was on the stand?

A. I was.

(Testimony of William J. Harrison.)

Q. Did you hear his testimony concerning his relationship with the Los Angeles Evening Herald and Express? A. I did.

Q. Was that testimony substantially accurate, Mr. Harrison?

A. It was, I think, absolutely accurate.

Q. Mr. Harrison, do you know how long the territory now in charge of Mr. Norton has been in existence as a dealership territory?

A. Since about 1913 or 1914.

Q. And at all times since that time it has been a dealership territory? A. It has.

Q. Do you understand a dealership territory to refer to that sort of a territory described by Mr. Norton in his testimony this morning?

A. So I understand it. [861]

Q. (By Mr. Compton): Mr. Harrison, were you in the courtroom during the time when Joe Woods testified concerning his employment by the Evening Herald and Express?

A. Yes, I was here.

Q. Do you recall hearing him testify that at the time he was employed by the Los Angeles Evening Herald and Express he was then engaged in the separate independent occupation of selling magazines? A. Yes.

Q. And do you further recall that he testified that he was permitted to continue that occupation so long as it did not interfere with his duties as district man? A. I remember that.

(Testimony of William J. Harrison.)

Q. Is that testimony of Mr. Woods substantially correct? A. That is true. [870].

Q. (By Mr. Compton): Mr. Harrison, were you in the courtroom at the time that Mr. Davey Bell testified concerning the complaints received by him from the downtown business men's association concerning one Harry Relis? A. I was.

Q. Will you state, Mr. Harrison, whether or not the adjustment of such complaints is handled by your department?

A. Not directly, Mr. Compton. It would be handled by the superintendent of street sales on downtown matters.

Q. Well, as to objections from other parts of the city, where would they be handled?

A. They would be handled out of the branch office, or by the district manager in those respective territories.

Q. Mr. Harrison, I will hand you Herald's Exhibit No. 4 for identification and ask you to state if you know what that document is.

A. Yes. It is a letter from Attorney J. Allan Frankel.

Q. Did you ever see that letter before?

A. I have.

Q. How did it come to your attention?

A. This letter is addressed to the Los Angeles Evening Herald and Express, to no particular individual nor to any particular department. Mail of that sort would reach the business manager's office and be sent down to my desk if it concerned

(Testimony of William J. Harrison.)

my department, as this letter was so handled. [871]

Q. And was that so received by you?

A. Yes, sir.

Mr. Compton: At this time I offer it in evidence as Herald's Exhibit No. 4, on the letterhead of J. Allan Frankel, dated December 31, 1934.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon, the document above referred to was received in evidence and marked as Respondent's Exhibit No. 4.)

[872]

Q. Mr. Harrison, do newsboys own the corners on which they operate?

A. The newsboys believe they own certain selling privileges on these corners.

Q. Go ahead, Mr. Harrison.

A. And they sell and transfer these corners occasionally [873] from one to another.

Q. They do not in fact have any——

Q. (By Trial Examiner Kennedy): Do they own the corners?

A. Mr. Examiner, the ownership of a corner implies the ownership of a piece of property; whereas the sale of these newspapers is merely the ownership, so-called, of the privilege of selling these newspapers on these respective corners. They consider that they own the privileges; they do not own the property.

Q. What do you consider about it?

(Testimony of William J. Harrison.)

A. Well, by custom, Mr. Examiner, we recognize that they do have certain rights and we have raised no objection from time to time when they have disposed of them. Frequently a sale of that sort is made without our knowledge.

Q. (By Mr. Compton): Mr. Harrison, have you ever had at any time complaints to your department concerning the operations of newsboys from the police department or other [874] regulatory bodies of the city of Los Angeles?

A. Yes, I have had such complaints.

Q. What, if anything, do you do in respect to the matter of such complaints?

A. Through the manager, the district manager of that particular territory, the newsboy's attention is brought to the nature of the complaint, and he is advised that if such complaint exists it would be well for him to discontinue such practices.

[875]

Mr. Hamblin: May we have just a moment, Mr. Examiner? Just one further question, Mr. Harrison.

I believe when you were last on the stand you testified that the retail price of the Los Angeles Evening Herald and Express was printed on the masthead of the paper, is that correct?

The Witness: That is true.

Mr. Hamblin: Now, leaving that aside, do you exercise any other control over the retail price of the Los Angeles Evening Herald and Express?

[887]

(Testimony of William J. Harrison.)

Cross Examination

Q. (By Mr. Mouritsen): Mr. Harrison, I believe you stated that you made a survey in 1934 regarding the number of newsboys within the city of Los Angeles? A. That is true.

Q. And in what capacity did you make that survey?

A. I caused the survey to be made in the capacity of circulation manager of the Los Angeles Evening Herald and Express, on a blank provided for that purpose and headed "Confidential Government Report."

Q. As a result of that survey can you state whether or not any official findings or document was issued by the NRA covering that particular aspect of the——

A. (Interrupting): As a result of the nation-wide inquiries?

Q. No, as a result of the survey that you caused to be made? A. None whatever.

Q. Now, this later survey that you made, in what capacity did you make that?

A. Circulation manager of the Evening Herald and Express.

Q. And what was the occasion for your making such a survey?

A. Well, largely if not wholly, for my own personal information. [888]

Q. And you say it was made under your supervision? A. Under my supervision.

(Testimony of William J. Harrison.)

Q. Did you have any blanks printed containing the information that you were seeking?

A. Yes.

Q. And how was the survey made, do you know?

A. The survey was made by the district managers in their respective territories.

Q. And was this made by all eighty-odd district managers of the Evening Herald and Express?

A. Yes, all of them.

Q. Did the district managers—do all of the district managers of the Evening Herald and Express, of whom I believe you said there were some eighty-odd—eighty-six I believe—work within the city limits of Los Angeles?

A. Not all of them; a great majority of them.

Q. And did you compile the results of this survey in any manner. A. Summarize it?

Q. Summarize it. A. Yes.

Q. Do you have a copy of that summary?

A. I have.

Q. May I see it, please? A. Yes. [889]

(The document referred to was passed to counsel.)

Q. (By Mr. Mouritsen) Now, Mr. Harrison, I note that your——

A. (Interrupting) May I have that, Mr. Mouritsen?

Q. Certainly.

A. You observe, Mr. Mouritsen, that this col-

(Testimony of William J. Harrison.)

umn here has nothing at all to do with this column.

Q. Now, I note that the summary which you prepared, Mr. Harrison, contains no reference to—strike that.

I believe you stated that you had a questionnaire which you sent out to the district managers. Do you have a copy of that questionnaire available?

A. This is the summary. Whether or not I have any blanks or not at the office I am uncertain about.

Q. Let me ask you, Mr. Harrison: The summary that you prepared contained all of the information that you requested upon the questionnaires that your district men had filled out?

A. Yes. This went as far as I requested them to make information. That covered everything I wanted.

Q. Now, your summary, Mr. Harrison, however, does not contain any information regarding various classifications of newsboys, does it? A. No.

Q. It does not indicate whether the newsboys there involved are main spots, or wholesalers, or full-time or part- [890] time or temporary?

A. Not at all.

Q. Or casual?

A. This had to do with totals.

Q. And in your summary—or, you found from your most recent survey that there were approximately 214 newsboys who operated, who were over twenty-one years of age, is that correct?

A. Yes.

(Testimony of William J. Harrison.)

Q. That is, all within the city of Los Angeles?

A. No. This report does not include all-day downtown men.

Q. And a more recent survey that you made, or that you had made under your direction, indicated that there are approximately 226 full-time hustlers and wholesalers, isn't that correct? This one that was just made a little while for you by Mr. Norton?

A. That is——

Mr. Compton (Interrupting): If the Examiner please, I am going to object to calling that a survey. Mr. Mouritsen knows very well the conditions under which that was made. He asked me for it a little while before—just before the date of the trial, and we took a list of check men off our books and Mr. Norton hurriedly, on one Saturday afternoon and Monday, attempted to get the rest of the information and we put it in at its face value and under agreement with [891] Mr. Mouritsen that that *it* all it was, and I object to him now calling it a survey of anything except the check men on our books.

Mr. Mouritsen: I will withdraw the question.

Q. With reference to these various transactions regarding corners between the newsboys, you recall the testimony about the buying and selling of corners? A. Yes. [892]

Q. (By Mr. Mouritsen) Mr. Harrison, the Evening Herald and Express does not have to furnish newspapers to any newsboy who may have purchased a corner from another newsboy, does it?

(Testimony of William J. Harrison.)

A. I do not think they do.

Trial Examiner Kennedy: Anything further?

Q. (By Mr. Mouritsen) Mr. Harrison, I believe you stated on your direct examination that there is a fluctuation in your circulation from day to day.

A. Depending largely on the character of news that may break, yes, considerable fluctuation.

Q. There is considerable fluctuation on the various corners, isn't that correct? A. Yes.

Q. Of what value, then, Mr. Harrison, is a standing order by an individual? [893]

A. A standing order, Mr. Mouritsen, is a base order below which the circulation does not fall. On every one of these corners there is an established trade. The papers that we sell downtown does not indicate that we sell that number of papers every day to that number of different individuals. They are the same buyers with a considerable degree of regularity. Now, when news breaks out that is of prime interest, first importance, the sales go up over and above that base order and there is where the fluctuation occurs. It does not affect your regular buyer of the paper.

Q. Is this established order then in effect a minimum required—a minimum sale required of each newsboy on the corner?

A. No, it doesn't represent minimum requirements. The order on Saturday, for instance, is considerably less than other days in the week, but it represents a form of intelligent shipping directions.

(Testimony of William J. Harrison.)

We have to have some information as to the number of papers to be printed and distributed to these various places. That represents the base order over and above which boys can order more and get them at our best transportation convenience.

Q. Now, Mr. Harrison, the Circulation Manager is one of the first persons to know what the headline of a particular paper is going to be, is that correct?

A. The editorial department, if there is anything unusual [894] in a news outbreak, will notify the circulation manager that an extra is coming or that a certain story will be carried in the following edition.

Q. Now, in the event you have a good news story, what you consider a good headline or good news story breaking, what do you do with reference to the press run on the first edition?

A. We notify the superintendent of street sales first. Then we phone, if it is within regular working hours, — I mean by that regular publishing hours, Mr. Mouritsen — various branches that we have.

They in turn check with their district managers as to what their probable requirements will be. They then begin to phone in orders to the mail room for a lesser number of papers than they think the demand will amount to, to be followed by larger orders after the papers have been on the street, and it shall have been determined whether an active sale is coming up or not.

(Testimony of William J. Harrison.)

Q. Does that take place on your regular occasions before you start your presses?

A. By that, Mr. Mouritsen, do you mean does that take place before regular edition hours?

Q. Every day. Do you do that every day?

A. We do that every day within working or publishing hours. Now, if something extraordinary happens we may try to get a somewhat earlier start on our first edition, and we may hold [895] a press crew overtime on the last edition of the evening to see if there will be any further demand.

Q. Well, as I recall, Mr. Harrison, many of these district men, or some of the district men have testified that they—do not come to work until afternoon, and many of them, I believe, have testified they come to work and start to work around ten o'clock. Now, if I understand the testimony correctly up to this point, it is that your press run starts at nine o'clock in the morning, is that correct? A. That is true.

Q. Now, can you explain to me how you could go through that process of checking with the district managers and the branch managers with reference to the edition that you bring out at nine o'clock?

A. Very easily, Mr. Mouritsen. The district managers work on staggered hours. Some come early and quit early; some come later and work later. The branch managers have no established hours but are practically on the job from early in the morning until late in the evening.

(Testimony of William J. Harrison.)

Q. Now, Mr. Harrison, in any event, this check merely goes as far as the district managers, is that correct? A. Yes.

Q. In other words, the district managers haven't got time to go around and contact each individual newsboy and find out how many papers he may want that day? [896] A. No.

Q. Then the number of papers supplied to the district manager on any good story is determined by the district manager?

A. Is determined by the district manager.

Q. Now, referring to the regular editions during normal publishing hours, do the district managers without consulta- [897] tion with vendors of newspapers determine the number of papers that they will order?

Mr. Hamblin: Mr. Reporter, will you read the last complete question?

(The record referred to was read by the reporter, as set forth above.)

The Witness: He has his standing order from the vendor on the corner and the total of those orders from the vendors that he has established his order in toto for his requirements on any particular edition.

Q. (By Mr. Hamblin) Now, you have used the term "standing order," and "base order." Are those terms synonymous? A. The same.

Q. I understood you to state that the boys can

(Testimony of William J. Harrison.)

on any particular edition increase their order above their standing or base order?

A. That is true.

Q. May or may not the boys from day to day decrease their order below that standing or base order? [898] A. That is true.

Q. That is, they may so decrease their order?

A. Yes.

Q. May they do that from edition to edition as well as from day to day?

A. Not without some difficulty in certain sections of the city where transportation facilities are not the same as they are downtown. Downtown we have thirteen re-coveries of these streets a day, thirteen deliveries and follow-up deliveries together. We haven't any such distribution in the residential section and the boy on the corner may wish a cut in his order after the papers have been dispatched from the mail room and on the way to him. Then his cut in his base order would appear the following day.

Q. (By Mr. Hamblin) Mr. Harrison, assume that the particular newsboy makes a cut in the number of papers required for one particular edition, and that cut order is not received prior to the time the delivery of that edition is commenced, [899] may or may not the boy adjust that cut in the connection with the delivery of the next edition?

Q. (By Mr. Hamblin) That is, he may?

A. He may.

(Testimony of William J. Harrison.)

Q. Now, apart from the downtown street sales, Mr. Harrison, are there or are there not a large number of sales in other districts within the city of Los Angeles?

A. The other districts as a total exceed the total of the sales of the downtown district.

Q. Can you estimate the total number of sales by newsboys coming within the classification of full-time newsboys and check men and selling within the city of Los Angeles? Just answer that yes or no. A. Yes.

Q. Will you state the process of reasoning and the factors which you would take into consideration in giving such an estimate?

A. I base it upon the fact that an all-day or full-time [900] newsboy, as an interchangeable term used here, will not cover his corner all day or full time on a sale that represents less than approximately one hundred a day. There is insufficient profit for him.

Q. Now, what, if any, other factors or matters would you take into consideration in reaching the estimate that we are referring to?

A. I would consider that the estimate of one hundred a day as applied to this group mentioned here is entirely too small for the reason that the sales on the downtown corner are considerably larger than those in the residential sections, and considering those factors I would arrive at a larger average per selling unit than one hundred a day. [901]

(Testimony of William J. Harrison.)

Q. (By Mr. Hamblin) Mr. Harrison, directing your attention to extras, that is, newspapers over and above the base or regular order of a newsboy, as I understand it, you have already testified that the district managers place an order with respect to the various editions for a certain number of extras, is that correct?

A. They place an order, Mr. Hamblin, a standing order, for each edition. Now, extras are delivered to the newsboy over and above that standing order, and the district manager takes these extras to the newsboys and inquires of him how many he thinks that he can use.

Q. And then the district manager leaves with the newsboy the number of extras for which the newsboy asks?

A. Yes. And later on he may go to the corner, find the newsboy with too many, pick up his excess and distribute them to some other corner that needs more. [911]

Mr. Hamblin: That is all.

Recross Examination [912]

Q. (By Mr. Mouritsen) Well, Mr. Harrison, realizing the present cost of news print, let's take a situation where a [915] corner in the downtown area has normally been selling, say, one hundred copies of the newspaper a day, and there is no special news story that in your broad experience would justify an order of, say, two hundred papers on that corner. Would the newsboy in that situation be permitted to double his order?

(Testimony of William J. Harrison.)

A. Frankly, no, Mr. Mouritsen; for the very reason that you ascribe, a waste of newsprint. Within reasonable limitations, the boys can do these things. Now, when I say "within reasonable limitations," they have full return privileges in the downtown section. However, we ask them to exercise reasonable discretion in their orders to avoid this waste, despite the fact that they get full returns.

Q. And do you also ask that they exercise reasonable discretion when they lower their order?

A. To this extent, Mr. Mouritsen, that we have frequently lowered their orders for them when they didn't ask it.

Q. I mean on the basis of experience that man might have quite a number of returns over a period of time, you would then lower the order so he wouldn't be wasting that paper, isn't that correct?

A. That is true. [916]

Q. (By Mr. Mouritsen) Mr. Harrison, do you or anyone else connected with the Herald belong to the Downtown Business Men's Association, or are you or anyone else connected with the Herald a member of the Downtown Business Men's Association?

A. I am not and I do not believe that the Evening Herald and Express is.

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony given by the witness Wil-

liam J. Harrison during this afternoon session is not applicable to the Los Angeles Times, with the exception of that portion of his testimony dealing with the conference late in 1939 or early in 1940 at [917] which he attended with Messrs. Marks, Black, O'Brien, Smith, Dunsmore and Nelson?

Mr. Mouritsen: That may be so stipulated.

Mr. Hall: Will you make the same stipulation reference to the Los Angeles Examiner?

Mr. Mouritsen: Yes. [918]

GUS GEORGON

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Georgon, were you present on [921] the corner of Fifth and Spring on or about January 21, 1939, when Henry Powers had a conversation with Sollie Epstein?

A. Yes, sir. [922]

Q. (By Mr. Mouritsen) Now, was anyone else present at that time, Mr. Georgon, other than Mr. Powers and Mr. Epstein?

A. Well, there were a few of the newsboys there getting their papers in the morning, early in the morning.

Q. And do you know the names of any newsboy getting his newspaper at that time?

A. Well, there is one, Harry Relis, and Mike Goldberg.

(Testimony of Gus Georgon.)

Q. And anyone else?

A. Myself and Henry Powers and Nickerson.

Q. Now, will you state what Mr. Powers said to Mr. Epstein and what Mr. Epstein said to Mr. Powers?

Q. (By Mr. Mouritsen) Will you state what Mr. Powers said to Mr. Epstein and what Mr. Epstein said to Mr. Powers?

A. Well, at the time I was selling the morning Times and Examiner, and of course Henry Powers, he come down to the stand at ten o'clock, and I wanted to help him, it was his first day there and I wanted to help him with the papers, after he bought the corner, so he went across the street—— [923]

Q. Just give us the conversation.

A. Henry asked for his papers and Mr. Epstein asked him if he had permission from the office, and Henry said, "No, I don't have permission." And he said, "I can't give you any papers until you get permission from the office." So——

Q. Well, is that about all the conversation that took place? A. That is all.

Q. Did Mr. Epstein give any papers to anyone on the corner that morning, that is, Fifth and Spring?

A. Yes; he gave the rest of the boys, and then this fellow Nickerson, after the old man passed away on the corner, he just took the corner temporarily, and he gave the papers to Nickerson and

(Testimony of Gus Georgon.)

he said, "You go ahead and sell the papers." That is all.

Q. Well, did he give the papers to Nickerson on this particular morning, when the conversation took place? A. Yes.

Q. After that conversation were you present at any other conversation that took place between Mr. Powers and a representative of the Herald and Express? A. Yes.

Q. Now, who was that?

A. That was Davey Bell, and I think it is Mr. Williams, Johnny Williams.

Q. And where did this conversation take place? [924]

A. Up to the Herald and Express office.

Q. And who else were present other than Mr. Bell and Mr. Williams, or Mr. McWilliams?

A. Nobody else, just myself and Henry Powers.

Q. Now, will you state what Mr. Powers said at that time and what Mr. Bell or Mr. McWilliams said? A. They said——

Mr. Hamblin (Interrupting): May I interrupt? I don't believe you have laid any foundation as to time. I don't wish to object unless it is necessary.

Q. (By Mr. Mouritsen) With reference to the other conversation, when did this second one take place?

A. I will say about—right after Solly Epstein told us to go up to the office and get permission from the office and then he will give us the papers.

(Testimony of Gus Georgon.)

Q. Well, the same day?

A. Yes, the same day.

Q. About how long afterwards?

A. Oh, I will say about an hour afterwards.

Q. Now, will you state what was said by these various individuals at this second conversation?

A. Well, we went over there and talked to Davey Bell and Charley McWilliams, and he said, "Well, you should have come here to the office first and got permission before you bought the corner." [925]

Q. Which one said that, Mr. McWilliams or Mr. Bell?

A. I am not sure which one of them, but I know one of those two said, "You should have come here to the office and got a permission before you bought the corner," and then he said, "The only thing you can do now is get your money back from the woman and let the corner go." And I said, "Why, if the boy paid for the corner, if the boy bought this corner," and I even showed him the bill of sale, and I said, "Why isn't he entitled to sell papers on that corner?" And he said, "Well, that is all we can do," so we just walked out.

Q. And after you left Mr. Bell and Mr. Harrison what did you do, if anything?

A. Then we went up to the Newsboys Union office and told the case to the officer there in charge.

Q. Who was that?

(Testimony of Gus Georgon.)

A. Mr. Comorre, there.

Q. Then what occurred after that time?

A. Well, after that time I think—I don't know, but Henry Powers got some papers somewhere and he was selling papers on the corner at the time with Mr. Nickerson. They both were selling the Herald and Express at the time.

Mr. Compton: Were you there? Did you see all this?

The Witness: Yes. So, a little later, I think Mr. Norton came up there and called Mr. Comorre to one side, and I don't know what their conversation was but I know that they took [926] Nickerson off the corner and let Henry Powers on the corner to sell papers regularly.

Cross Examination

Q. (By Mr. Compton) You state that Mr. Nickerson took the corner after the blind man died? A. Temporarily.

Q. Wasn't it a fact that he had been selling for the blind man for almost a year before he died?

A. I don't think he was selling—the only time he was selling the papers was in the morning, the Times and Examiner.

Q. Don't you know the blind man was ill for six or eight months before he died and that Nickerson worked for him and sold papers for him on that corner?

A. I don't know about that.

(Testimony of Gus Georgon.)

Q. How long were you on the corner?

A. I was on the corner, oh, about two or three weeks.

Q. And you don't know whether Nickerson was at the corner before two or three weeks or not, do you?

A. No, he didn't have the corner. He wasn't selling the Herald and Express. He was selling the Times and Examiner.

Q. Who was selling it?

A. The blind man was selling it.

Q. Don't you know that the blind man was sick and not able to work for more than six months before he died? [927]

The Witness: No, I don't know that.

Q. (By Mr. Compton) Do you know whether the blind man was selling papers there three weeks before the day on which you state that Mr. Powers bought the corner? A. No, I don't.

Q. Well, were you there?

A. I was selling papers in the morning, yes.

Q. Well, who was selling the Herald then?

A. Nickerson.

Q. Well, that is what I said. And he was selling before you ever came on the corner, wasn't he?

A. Yes. He was selling there—the Herald and Express.

Q. You haven't any idea how much longer before that that he was selling those papers, have you?

(Testimony of Gus Georgon.)

The Witness: No. Nickerson was selling papers. I was [928] selling the Times and Examiner in the morning and Nickerson was selling the Herald and Express in the day-time. That is, after the old man died. Then Nickerson took the corner temporarily.

Q. (By Mr. Compton) Now, how long were you on the corner before Harry Powers bought it?

A. Was there about—oh, I think about two weeks——

Q. About two weeks?

A. Or three weeks. Yes.

Q. Now, who sold the Evening Herald and Express during the day-time during the two weeks in which you were on the corner selling the morning papers? A. Nickerson.

Q. And as far as you know—beyond that two weeks you do not know who sold the paper on the corner, do you? A. No, I don't.

Q. Then, when I say that Mr. Nickerson may have been selling papers there for six months, or more, you do not know anything to the contrary, do you? A. No, I do not. I do not. [929]

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony of Gus Georgon has no application to the Times case?

Mr. Mouritsen: It may be so stipulated.

Mr. Hall: May it be stipulated that the testi-

mony of the witness who just left the stand shall not apply to the Los Angeles Examiner case?

Mr. Mouritsen: It may be so stipulated. That is, it is not the intention of the Board's attorney that it should apply. The board itself will determine whether it shall apply.

Mr. Hall: Just a minute. Pardon me, now. There have been various stipulations made, Mr. Mouritsen, as to the applicability of the testimony, and I think—at least where I have joined in these stipulations, and I think it is probably Mr. Cosgrove's assumption, too, that these stipulations have made such testimony inapplicable to the Examiner and to the Times, respectively. Is that your understanding?

Mr. Mouritsen: That, Mr. Hall, is my understanding—it is my understanding that I am not presenting that information to apply. It was my intention to apply it to the Evening Herald and Express case. Now—and I may state that that has been, as far as I know how far I can bind the Board, that that is my understanding, that it does not apply.

Mr. Cosgrove: Well, you answered a question asked by the Examiner on that matter, and you do not now wish to be [930] understood as in any manner varying the answer that you gave to the Examiner as to what your contention was with reference to the application of the testimony?

Mr. Mouritsen: Well, now, what, Mr. Cosgrove, was my answer to the Examiner to which you re-

fer? You understand, Mr. Cosgrove and Mr. Hall, the hearing has been consolidated. Now, I have not—I am applying this action to the particular phases of the case, and—that is, of the various petitions filed, and I do not have the intention that the witnesses called by the Herald and Express shall apply their testimony to the various other papers, the Times and the Examiner. Now, how I can—what my authority is with reference to the consolidation of the cases I do not know, but I can state fully that it has not been my intention to present any of this matter except that with reference to the organization, with reference to any of the—to either the Examiner or the Times.

Mr. Hall: Then, in other words, Mr. Mouritsen, your statement goes about as far as this: That the stipulations that you have made from time to time over the last week had reference solely to your intention, or your own belief? Do they go any further than that?

Mr. Mouritsen: Well, I think—I think, Mr. Hall, that is about as far as they can go in my capacity with the Board. In other words, the Board has consolidated the hearing for [931] all purposes, and——

Mr. Hall (Interrupting): Well, of course you will pardon me. I am of course not as familiar with the Board's procedure as you are, Mr. Mouritsen. Stipulations have been offered from time to time in these consolidated cases which you have signed as an attorney for the Board, and I had

assumed that in those stipulations you spoke for the Board and that the stipulation was binding upon the Board, and if it were not I can see very little use in entering into those stipulations and I would be inclined to withdraw some that I have made under that assumption. If, on the other hand, you did bind the Board in those stipulations then do I understand that these verbal stipulations which have been made from time to time during the last week are in a different category? I am just asking. I would like to know. I am not suggesting any criticism of your conduct, Mr. Mouritsen.

Mr. Mouritsen: No. I think——

Mr. Hall (Interrupting): But I would like to be advised.

Mr. Mouritsen (Continuing) ——that they would be in the same category and——

Mr. Hall (Interrupting): Binding upon the Board?

Mr. Mouritsen: I imagine they would be.

Trial Examiner Kennedy: Mr. Mouritsen, let us determine what your instructions are in this regard. As attorney for the Board, are you advised that you operate in any different [932] capacity than an attorney-at-law in ordinary court proceedings? That is, that your authority is not as broad as an attorney's would be in court? Do you have any regulation on that, or any instruction?

Mr. Mouritsen: No. I think there is not, Mr. Examiner. But——

Trial Examiner Kennedy (Interrupting): I do

not know of the situation at all. I have nothing to do with that side of the Board's personnel and I do not know how far the authority goes. I have seen the point raised in other agencies where they operate on somewhat similar procedure to that we follow, where the authority—I have in mind the Federal Trade Commission—where they take the position that they merely cannot bind the commission on these things, and I do not think we have ever had the point raised in a Labor Board proceeding. So, if there is any question about it I think you had better ascertain what that situation is so all parties may be advised.

Mr. Hall: It leaves us in a quandary, if the Examiner please, because many of these stipulations are in essence stipulations as to facts. Now, where I say, "Will you stipulate to such and such a fact, Mr. Mouritsen?" and he says, "Yes," that leaves the ordinary attorney like myself, unfamiliar with these Board proceedings, under the impression that that fact has been stipulated to as a fact in the case, [933] and that it is a fact in the case for all purposes. Hence, the point of my inquiry at this time, when counsel indicates that because of some possible limitation upon his authority the conclusion that I have assumed to be the case all along is not the fact.

Trial Examiner Kennedy: Well, we certainly cannot assume that the attorney for the Board does not speak for the Board, and does not have the authority to limit the Board. That is certainly the

construction I would put on it, unless there is some other rule of the Board shown. It is certainly not in any published rule of the Board, and if there is any private rule, I think we ought to find out what that is.

Mr. Mouritsen: Now, I do not thing there is, Mr. Examiner, and perhaps I spoke out of an excess of caution. However, I would, in answer to Mr. Hall's offer of a stipulation, merely say yes. [934]

Mr. Hall: To clarify the last point, Mr. Examiner—pardon the interruption—I want to state for the purposes of the record that I am assuming henceforth, as I have in the past, that where you make a stipulation with me upon a question of fact you bind the Board by such statement or by such stipulation.

Trial Examiner Kennedy: That is my understanding.

Mr. Mouritsen: Yes, I think that is proper.

GORDON NORTON

recalled as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, resumed the stand and testified further as follows:

Direct Examination

Q. (By Mr. Mouritsen) And that is, if Jimmy Blake, the predecessor to Tony, was paid in the same manner as Tony now is?

A. Well, if he was?

Q. Yes. A. Yes, he was. [935]

Tuesday, June 18, 1940.

Met, pursuant to adjournment, at 9:30 o'clock a. m. [939]

ROBERT L. SMITH

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you reside, Mr. Smith?

A. 5354 Linda Vista Drive, Alta Canada.

Q. That is in the city of Los Angeles?

A. No.

Q. What is your business or profession?

A. Newspaper business.

Q. What official position do you hold with the Stockholders Publishing Company, Inc.?

A. Executive Vice President and General Manager.

Q. How long have you held that position?

A. Approximately seven years.

Q. Will you describe briefly what business the Stockholders Publishing Company, Inc. engages in?

A. Their exclusive business is the publication of the News, formerly the Daily News, a morning publication, and Evening News, an afternoon publication; both now known as the News, operating on an all-day basis. [942]

Q. That's all right. Approximately when did this change occur? A. April 1st, 1940.

Q. Prior to that time the earlier editions of the

(Testimony of Robert L. Smith.)

paper had been called the Morning News, or the Daily News? A. Daily News.

Q. And the subsequent publications had been called the Evening News? A. That is right.

Q. Now they are all called the News?

A. That is right.

Q. Is it correct to say that the Stockholders Publishing Company, Inc., is engaged in the business of circulating news? A. Yes.

Q. And is one of the methods of that circulation through street sales? [943] A. Yes.

Q. And the street sales are made, in the main, through newsboys, is that correct? A. Yes.

Q. Now, could you enumerate the various editions issued by the Stockholders Publishing Company, Inc., giving the approximate time of each issue?

A. We have ten editions a day, beginning with the 1 Star and running through, consecutively, 1, 2, 3,—up to the 10 Star edition, and the 1 Star is published at approximately 10:50 p. m. [944]

Q. Now, Mr. Smith, I believe that the editions of the News, beginning with the Five Star edition, are handled in the main by newsboys who also handle the Evening Herald and Express, is that correct? A. Yes.

Q. Now, I believe the testimony to date in the hearing indicates that the handling of these two papers by one set of newsboys commenced approximately August 25, 1937? A. That is right.

Q. Now, prior to that time, did you attend any

(Testimony of Robert L. Smith.)

ers Publishing Company and representatives of the Evening Herald and Express whereby that arrangement was made? A. Yes.

Q. And when did the first of such conferences occur?

A. Shortly before the change was made.

Q. Were there a number of such conferences?

A. No.

Q. And approximately how many

A. As I recall it, D. G. Keller, business manager of the Herald and Express, and myself first discussed the matter informally with no one else present. [945]

Q. Could you tell us what was said by you and what was said by Mr. Keeler at this first conference?

A. I can give you the essence of our discussion, which was brief and on the subject of the proposed consolidation, yes. [946]

Q. Will you please do so?

A. Over a period of years the Record, then the Evening News, and the publication of our two, which was the only one being discussed in regard to consolidation, had been jointly distributed with the Herald and Express from time to time.

That joint distribution had been discontinued from time to time, based upon the policies of various managements, presumably, which had been in charge of the distribution of both papers, particularly, I believe, the Record, because it had

(Testimony of Robert L. Smith.)

changed hands and managements a number of times over a period of years.

In recent years particularly, people engaged in newspaper business have recognized the necessity for increased efficiency, increased economy, and increased cooperation between publishers in connection with the operation of their business. Within the past two-year period we have nearly a hundred newspapers that have gone out of business or merged with other publications, and that more or less justifies conferences such as the one we held.

At the time Stockholders Publishing Company, Inc. purchased the Record, I discontinued the joint distribution that existed at that time, or that had existed prior to that time. I am not definite as to whether or not the joint distribution had been discontinued somewhat before we took over or not. I am under the impression that it had, but it was proposed at that time that—— [947]

Q. (Interrupting) Well, that was joint distribution with——

A. (Interrupting) That joint distribution with the Herald be undertaken again. We felt then it would be to our benefit to have our own distribution, and although it was our first operation in the afternoon field we wanted to be directly responsible for our own distribution arrangements.

However, developments in business change rapidly over a period of time, and by the time we had the meeting with Mr. Keeler and myself, it seemed mutually desirable to go to a joint operation with

(Testimony of Robert L. Smith.)

respect to the distribution and sale of our papers. Two points were involved, so far as we were concerned; one, it would save us some money; two, it would increase the number of outlets that we would have for the sale and distribution of our paper, thus possibly increasing our total sale, and it is always desirable to increase your total circulation, of course; and it was along those lines that we discussed the matter of a consolidated operation.

Q. Now, after that time were other conferences held at which the same subject matter was discussed, that is, consolidation of the handling of the papers, so far as street sales were concerned? [948]

A. As I previously indicated, I believe one subsequent meeting is what I recall.

Q. And where was that held?

A. In Don Keeler's office.

Q. And who were the people present?

A. As I recall it, Mr. Harrison was present, and our circulation manager at that time was Mr. W. A. Robare. He was on his vacation, and his assistant, Mr. Van Dyke, was present, I believe. As I recall it, no one else was present.

Q. And Mr. Harrison was the circulation manager of the Evening Herald and Express?

A. Yes.

Q. And how long before the actual consolidation took place did this conference occur?

Mr. L. B. Binford: It will be stipulated, Mr. Mouritsen, that when you refer to consolidation

(Testimony of Robert L. Smith.)

without further amplifying it, that it is intended to mean the arrangement by which there was a joint sale by newsboys on street sales covering the Herald and Express and the News?

Mr. Mouritsen: Yes, I think so. That is so stipulated.

The Witness: A matter of a few days. [949]

Q. (By Mr. Mouritsen) Will you please state what was said at that conference, naming, so far as you can, the parties who made any statements?

A. The conference did not register very strongly with me, other than that it was for the purpose of working out the modus operandi of the move, and that was delegated by Mr. Keeler to Mr. Harrison and his assistants, and by me to Mr. Van Dyke, Mr. Robare's assistant, and the other circulation executives; and for that reason the minutia of the meeting was something I don't recall. It was a brief meeting.

I believe I left before the meeting was over for the reason that I had delegated to these others the things that were to be worked out.

Q. Was Mr. Robare the only other representative of the News who was present?

A. Mr. Robare was not present, as I recall it. As I stated, Mr. Van Dyke, his assistant, was representing him. Mr. Robare was on vacation at that time.

Q. And is Mr. Van Dyke connected with the circulation department of the News at the present time? A. No, he is not. [950]

(Testimony of Robert L. Smith.)

Q. Now, by this consolidation, Mr. Smith, a large number of newsboys were eliminated, is that correct? A. Yes, some were eliminated.

Q. And did Mr. Van Dyke present for your approval details regarding the elimination of some of these newsboys? A. No. [953]

Q. Well, did you leave it to Mr. Van Dyke to decide whether the boys who had formerly handled the News were to be eliminated or whether the boys who had formerly handled the Evening Herald and Express were to be eliminated?

A. That, of course, was not entirely up to Mr. Van Dyke, or to anyone identified with the News.

Q. Well, an agreement of some kind had to be made in that regard, did it not, Mr. Smith?

A. You mean an agreement between whom?

Q. As to which newsboys were to be eliminated, and as to which were to handle both papers after the consolidation.

A. Well, of course, we do not deal directly with the newsboys, either the Herald or ourselves. All arrangements made by us were made with the circulation managers and on down the line to the district managers.

Q. Well, wasn't that subject ever discussed or brought to your attention, that that is one of the details of this consolidation?

A. As I indicated, the details were worked out by Mr. Harrison and Mr. Van Dyke.

Q. And any such arrangement worked out by

(Testimony of Robert L. Smith.)

Mr. Van Dyke had your tacit approval with respect to that detail, is that correct?

A. Yes. I was interested in how much it was going to cost and how much more representation it would give us. [954]

Q. Now, did Mr. Van Dyke ever present for your approval the detail as to the manner in which the respective newspapers were to be displayed after the consolidation?

A. Not at that time.

Q. When did he do that?

A. Mr. Van Dyke did not do that. Upon returning from his vacation that matter came up through Mr. Robare.

Q. Will you explain how that matter—that is, the display—came up through Mr. Robare?

A. All circulation managers are zealous with respect to the sale, display and calling of the newspaper they represent, and a part of their duties are to get reports as to what extent that sales effort is being put forward for their product.

Also, if they are sufficiently energetic they cruise around the city rather than rely exclusively on second-hand information.

Mr. Robare, following general observation and reports concerning the operation of the consolidated deal—I am saying that now—reported back that we were not getting a proper break, as he termed it, and asked me to use my influence with Mr. Keeler to see that a fair break was given to the News as

(Testimony of Robert L. Smith.)

well as the Herald in the sale and distribution under the joint setup.

You understand that it was the Herald organization that [955] took over the joint distribution and sale. And, for that reason, the control that Mr. Van Dyke or Mr. Robare or myself or anyone connected with the News could exert in connection with it was limited to some degree.

Q. I suppose you received a report from Mr. Robare regarding the outcome of his efforts along that line, to see that the News received a break, as you say? A. Yes.

Q. Now, what did the—what did he present for your approval or for your information regarding that?

A. He made the general statement that the News was being buried and that the News was not being displayed to the same degree that the Herald was, and asked that I take the matter to the Herald management, meaning Mr. Keeler.

I told him that I would do so only if he would give me specific cases and he obtained such specific cases and I arranged with Mr. Keeler to have Mr. Robare and Mr. Harrison discuss the matter with a view to working it out on a fair and equitable basis, and I believe that from time to time meetings were held between Mr. Robare and Mr. Harrison for that purpose.

Q. Did you attend any of those conferences at which the subject matter of the manner of display was discussed?

(Testimony of Robert L. Smith.)

A. Yes, I believe I did once or twice. [956]

Q. Will you please state what was said at that meeting, naming the individuals who made such statements?

A. The meeting was called at our request and we laid upon the table, as it were, our complaints with respect to the specific instances which Mr. Robare was prepared to present to Mr. Harrison, and a joint discussion was had, in which I believe we both assured the other that it was not our desire to steal a march on the other, and the usual niceties were exchanged, following which Mr. Keeler suggested that Mr. Harrison and Mr. Robare meet in Mr. Harrison's office following adjournment of the meeting in Mr. Keeler's office, for the purpose of working out the details.

Q. And what was the final outcome of the conference? Did the News receive an even break on the display after that time?

A. There are differences of opinion on that subject. [957]

Q. And what specific complaints—were the specific complaints that were discussed at that meeting remedied?

Mr. L. B. Binford: If you know.

The Witness: Not satisfactorily.

Q. (By Mr. Mouritsen) Well, now, let's—in general what were those complaints, what was the nature of them?

(Testimony of Robert L. Smith.)

I believe you have already stated that in some cases the News was buried. Now, was there any different complaint covering the manner of display?

A. Yes. It was pointed out by the Herald management, probably by Mr. Harrison, that the Herald sales on the streets were at that time approximately two and a half times the street sales of the Evening News, and that it would hardly be considered equitable to have the same number of News as there were Heralds, or to have the same identical display when the public demand based on previous sale indicated a ratio of approximately 2½ to 1 in favor of the Herald.

We acceded to that as being logical, but suggested that because of the difference in format of the two papers, the News be held on the outside so that it would not be buried, as they referred to it, and that the district men be advised with respect to that method and that where possible both the papers would be named in the call. That is, the boys would cry "Herald News" or "News Herald" or something to that effect. [958]

Mr. Harrison did, I recall, at either that or a subsequent meeting, point out that his ability to get the newsboys to display and call the papers as we desired them to be displayed and called and as we jointly agreed would be mutually satisfactory, was a task that he had by no means control over. He could pass the word along to his district man

(Testimony of Robert L. Smith.)

but that was as far as he could go. He made that point very clear, and he made it more emphatically as complaints continued to go on over a period of months.

Q. And the information that you received at that time regarding these complaints about the manner of display indicated that these differences had not entirely been eliminated is that correct?

A. I, of course, can't speak for the Herald, but speaking for the News I would say that they are not satisfactory at the present time.

Q. Now, were there other conferences after this first one regarding the manner of display of the two respective newspapers?

A. I believe Mr. Harrison and Mr. Robare and subsequently our present circulation manager, Mr. O'Brien, have held a number of meetings and have discussed, among other things, that particular point. I recall attending one particular meeting devoted to that purpose. [959]

Q. And approximately when was that meeting held?

A. My best recollection is that it was a number of months after the joint distribution went into effect.

Q. And where was it held?

A. It was also held in Mr. Keeler's office.

Q. Who were the people present?

A. As I recall it, the same people were present as at the previous meeting—no, that is not correct. By

(Testimony of Robert L. Smith.)

that time Mr. O'Brien became circulation manager and he was present rather than Mr. Rebare or Mr. Van Dyke.

Q. Now, were a number of complaints regarding the manner of display discussed at this second meeting?

A. It was approximately the same type of meeting with respect to discussion and results as the previous one.

Q. You presented at that time, however, different specific complaints regarding the manner of handling the News with relation to the Herald and Express by newsboys?

A. Yes. I think Mr. O'Brien had cases where our representatives in the circulation department had endeavored to make suggestions concerning the display, and they were politely told to go to hell.

Q. Now, do you know how Mr. O'Brien obtained his information regarding these specific complaints?

A. He obtained them from——

Mr. L. B. Binford (Interrupting): Do you know? [960]

The Witness: Yes, I do know. He obtained them from his circulation supervisor, whose duty it was to see to such matters.

Q. (By Mr. Mouritsen) Now, with reference to this use of the expression "buried," the News is a smaller paper in size than the Herald and Express, is that correct? A. Yes.

Q. It is just—when it is not folded at all, it is

(Testimony of Robert L. Smith.)

just a little larger than the Herald is when it is folded double, is that correct? A. Yes.

Q. And by "buried," do you mean that it was held by the newsboy back of the copies of the Evening Herald and Express so that only a small portion of it appeared?

A. Well, there are a number of techniques that apparently are used to bury a competing paper by some one desiring not to sell it, and I mean to make no disparaging reference to the Herald management when I say that.

Not having any at all in one's hand is a very effective way of burying a particular publication. Having only one as compared to eight or ten or even twenty of another publication is another way, and then holding them as you suggest inside rather than outside, of course, is another.

Failure to call the paper, of course, would constitute another. [961]

Q. Now, do you recall any further conferences at which the manner of display of the newsboys, or by the newsboys of the respective papers was discussed?

A. No.

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony given this morning by Robert L. Smith has no application to the Los Angeles Times case? [962]

Mr. Mouritsen: It may be so stipulated.

(Testimony of Robert L. Smith.)

Mr. Hall: May the same thing be stipulated with reference to the Los Angeles Examiner?

Mr. Mouritsen: That may be so stipulated.

DUTTON F. O'BRIEN

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows: [963]

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. O'Brien?

A. 215 Doheny Drive, Beverly Hills.

Q. What is your business or occupation?

A. I am circulation manager of the News.

Q. How long have you held that position?

A. Since September 5, 1938. [963]

Q. Mr. O'Brien, will you please enumerate the editions of the News that are issued and state the approximate hour of issuance of the editions?

A. We print ten editions, which are designated by stars, in sequence from one to ten stars. The first edition is printed at 10:50 p.m. on the date preceding the date of publication;

The second edition is 11:15 p.m.;

The third edition is 12:15 a.m.;

The fourth edition at 2:45 a.m.;

The fifth edition at 9:50 a.m.;

The sixth edition at 12:10 p.m.;

(Testimony of Dutton F. O'Brien.)

The seventh at 1:10 p.m.;

The eighth at 2:30 p.m.;

The ninth at 4:00 o'clock;

And the tenth at 5:00 o'clock. [964]

Q. (By Mr. Mouritsen) Now, Mr. O'Brien, will you explain how the first four editions of the News are circulated so far as street sales are concerned, and also confine that, please, to circulation within the city of Los Angeles?

A. The only edition of the first four which reaches the city streets is the fourth edition, the four star.

Q. The first three are not sold on the streets?

A. They are used for suburban dealers and routes and so forth.

Q. Will you explain, please, how, then, the fourth edition is handled by the circulation department so far as street sales within the city of Los Angeles is concerned?

A. I don't believe I understand your use of the word "handled." What do you mean by that?

Q. Now, how does the paper put it out? How do you circulate the fourth edition?

A. The district managers call at the newspaper, at the plant, for the newspapers.

The Witness: The district managers call at the newspaper office for their copies of the fourth edition, which they in turn distribute to the news dealers, the newsboys and the racks. [965]

Q. (By Mr. Mouritsen): Do you have a set of district managers who handle only that fourth edition?

(Testimony of Dutton F. O'Brien.)

A. Yes.

Q. And approximately how many such district managers are there?

A. For the city edition, in the fourth edition, there are fourteen.

Q. You understand, I am restricting this merely to circulation within the city limits of Los Angeles?

A. Yes.

Q. Do you have also another set of district managers who handle all editions of the paper from the fifth edition on?

A. With the exception of the Seven Star edition, which is used only for route delivery.

Q. Now, will you explain, please, what work these other district managers do so far as the circulation of the other editions, other than the Seven Star, are concerned and that is within the city limits of Los Angeles?

A. All the district managers call at the office for their Five Star edition, which is the first they take out. Succeeding editions are either sent to them on their territories or they come into the office for them. They make the distribution, also, to the news-dealers, the corner boys, the newsboys, and the racks. [966]

Q. Do those district managers return their unsold copies of the paper each evening?

A. Not each evening, no.

Q. When do they do that?

A. The next day and the second day afterwards.

Q. Do they all report back to the News after the completion of their day's duties? A. No.

(Testimony of Dutton F. O'Brien.)

Q. When do they make their return of collections from street sales?

A. Our men work on a wholesale basis; they pay their bills the next morning for the preceding day's papers which are [968] furnished to them.

Q. Now, returning to the morning district men, in general when do they report, or when do they commence their duties?

A. At about 2:45 to 3:15 a.m.

Q. And they also report to the plant and receive their papers at that time? A. That is right.

Q. And then they make their distribution and do they return to their plant at the conclusion of their day's duties?

A. Not necessarily. Some do.

Q. Some do and some do not?

A. But they are not required to.

Q. Do they return the unsold copies of the paper at the completion of their day's duties?

A. In some cases. But more of them bring them in the next day, the day following.

Q. Mr. O'Brien, certain of the newsboys have testified regarding certain racks in which are placed the copies of the News. Those racks are furnished by the News, are they not?

A. Yes. To the district managers.

Q. And they remain the property, however, of the News, or the Stockholders Publishing Company?

A. That is true. They are provided for the convenience of the district manager.

(Testimony of Dutton F. O'Brien.)

Q. Do you from time to time bring in and repair those [969] racks if damaged?

A. We ask the district managers to keep them in as good condition as possible, bringing in those which are damaged for repair.

Q. And that repair work is done by the Stock holders Publishing Company?

A. That is. It is paid for by the Stockholders Publishing Company.

Q. And from time to time does the News furnish various change aprons to be used by the newsboys in their operations?

A. Occasionally, I believe, yes.

Q. And such change aprons bear the name of the News, do they not? A. They do, yes. [970]

Q. With the understanding of the expression "giving the News a break"—strike that.

Have you from time to time presented to Mr. Smith, complaints that the newsboys were not giving the News a break in the display?

Mr. L. B. Binford: Might I suggest that, in view of the witness' definition of the word "break" given to the Examiner, that question should be "an even break."

Mr. Mouritsen: I accept the amendment, Mr. Examiner. I think it is a very sensible solution or suggestion.

The Witness: From time to time I have discussed with Mr. Smith the inferiority of representation we have had throughout the city through the newsboys.

(Testimony of Dutton F. O'Brien.)

Q. (By Mr. Mouritsen) And how did you—what was the basis for these—what was your source of information regarding these various matters regarding inferior representation?

A. Personal observation to a general extent, reports of other members of the department to a larger extent.

Q. These other members of the department who were furnished that information, who are they?

A. Principally Mr. Reichert, who was then in charge of street sales. [972]

Q. (By Trial Examiner Kennedy) Do you in your operations attempt to maintain a retail price for the paper?

A. The retail price of the paper is printed each day on [973] the paper.

Q. Do you know of any instances where that is varied from in the retail price? A. I do not.

Q. Mr. O'Brien, have you during the period while you have been circulation manager met with representatives of the Newsboys Union?

A. Members of the Newsboys Union have called on me on two or three occasions.

Q. And what in general have they taken up with you?

A. The matters were so minor I don't recall them at the time.

Q. Did they take up with you any grievance regarding the newsboys?

A. I don't recall, Mr. Mouritsen.

(Testimony of Dutton F. O'Brien.)

Q. For the purpose of refreshing your recollection, Mr. O'Brien, I will ask you if you did not take up with representatives of the newsboys on one occasion the price at which the newsboys received the copies of the News that they sell? [974]

The Witness: I did not take up with the newsboys any such question.

Q. (By Mr. Mouritsen) Did they take it up with you? A. They did.

Q. And was that approximately a year ago?

A. I believe it was at least that long ago; possibly longer.

Q. And where did they take the matter up with you? A. At my office.

Q. And who were present?

A. The only one I can remember and identify was Pat Comorre. There were others there but I don't know who they were.

Q. Now, could you state what you said on that occasion and what the newsboys' representative said on that occasion?

A. I believe that Mr. Comorre, as representative or as spokesman, I should say, for the committee which called upon me said that the men who handled the—the newsboys, rather, [975] who handled the morning paper were paying a quarter of a cent more per copy than the newsboys who sold the afternoon papers, there being two newspapers at that time.

I don't remember what specific questions he may have asked, nor what my answers might have been,

(Testimony of Dutton F. O'Brien.)

but I do remember in substance that I referred the committee and its members to the district managers who have full control over the prices at which they sell to the newsboys.

Q. Do you recall any other occasion on which representatives of the newsboys took up any matters with you?

A. I am sorry to say that I don't remember what the questions were that they asked when they came in, although I do recall they were there two or three times.

Q. I will ask you if within the last couple of months representatives of the newsboys have not taken up with you the question of whether or not the News was to be handled by a separate set of newsboys?

A. That question was taken up with Mr. Smith, not with me.

Q. Were you present at a——

A. (Interrupting) I was, yes.

Q. Where did that occur?

A. In Mr. Smith's office.

Q. Other than yourself and Mr. Smith, who else were present?

A. I believe that P. M. Connelly was there and five or six other men. I do not recall who they were. [976]

Q. Will you state what was said on that occasion by representatives of the union and what was said either by yourself or Mr. Smith?

(Testimony of Dutton F. O'Brien.)

A. In substance, Mr. Connelly asked Mr. Smith if we proposed separating the sale of newspapers after the change to the all-day publication, which was dated for April 1st, 1940, and Mr. Smith assured Mr. Connelly and the committee which called upon him that that was not our intention. May I amend that?

Q. Surely.

A. When I say "separate the newspapers," I mean separate the retail sale of the newspapers on the streets.

Q. In other words, what papers were to be separated?

A. I believe the intention of the committee was to inquire about the Herald and Express and the News sales on the downtown corners.

Q. Now, Mr. O'Brien, how do the amount of street sales of the publication, compare with the street sales of all editions from the fifth on excluding the seventh?

A. You mean the total number of copies sold?

Q. With reference to the number of copies sold. Now, how [977] do they compare?

A. Well, that fluctuates, of course, almost daily. In fact, it does fluctuate daily.

Q. Yes. But is it not true that the street sales of the paper from the fifth edition on are much larger than the street sales of the fourth edition?

A. Naturally. There are five editions.

Q. Now, approximately what is the difference between the street sales of the fourth edition and those of all editions from the fifth on excluding the seventh?

(Testimony of Dutton F. O'Brien.)

Mr. L. B. Binford: You mean in number of papers?

Q. (By Mr. Mouritsen) Approximately, or percentages, whichever way he can best give it.

A. Of the total number of copies sold on the city streets the Four Star sale represents approximately thirty to thirty-five per cent of the total.

Q. And with reference to the number of newsboys, how does the percentage compare?

A. That I don't know. There are more newsboys in the afternoon than there are in the morning.

Q. Is it a fact that the fourth edition is in some instances handled by newsboys who handle also the Examiner and the Times?

A. That is true in some cases, yes.

Q. How was that arrangement made, if it was made, to your [978] knowledge; that is, whereby the same newsboy handles the News, Examiner and the Times?

Mr. L. B. Binford: If you know.

The Witness: I don't know. That antedated my association with the News.

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony of Mr. Dutton O'Brien has no application to the Times case?

Mr. Mouritsen: That may be so stipulated.

Mr. Cosgrove: He made some sort of a reference about newsboys calling on him and taking up the matter of the price of papers or something.

Mr. Mouritsen? Well, that I would desire to exclude from the stipulation.

Mr. Cosgrove: All right.

Mr. Hall: Will you make the same stipulation as to the Los Angeles Examiner?

Mr. Mouritsen: Yes, with the same exclusion.

Mr. Hall: Yes. [979]

Mr. L. B. Binford: Might I suggest, Mr. Mouritsen, that you mentioned to me during the recess the fact that you would like us to furnish you with a list of the so-called check men? [980]

Let the record show that I am handing to Mr. Mouritsen a list prepared by our accounting department consisting of two pages, giving the names and addresses and the amount paid to each of the group of wholesalers as they have been termed in this record, or sometimes termed as check men. The addresses referred to in the list are the addresses at which the newsboys or wholesalers operate, not the residence address.

Mr. Mouritsen: Thank you. Could this be marked as Board's Exhibit next in order?

Trial Examiner Kennedy: What will the number be, Mr. Reporter?

The Reporter: Board's Exhibit No. 9. [981]

Mr. Mouritsen: Mr. Binford, will it be stipulated that the list you have furnished, Board's Exhibit 9 for identification, is a complete list of all so-called check men or wholesalers of the News?

Mr. L. B. Binford: Yes, so stipulated.

There is a possibility, of course, of an omission or

addition that should not have been there, but that is intended to be just in accordance with your statement.

Mr. Mouritsen: And that it indicates the amount of the check that they receive from the News?

Mr. L. B. Binford: So stipulated.

Mr. Mouritsen: And could I inquire whether the figures on the right-hand side indicate the amount they receive before or after deductions for Social Security and Unemployment Insurance?

Mr. O'Brien: Yes, sir. Those figures are the amounts before the deduction of Social Security. [982]

Mr. Mouritsen: Yes, that is what Mr. O'Brien stated, and that can be so stipulated.

It will be stipulated that deductions are made from these figures for Social Security and Unemployment Insurance.

Mr. L. B. Binford: Yes.

Mr. Mouritsen: And that for these men the Stockholders Publishing Company, Inc. is registered as the employer for the duties the men perform for which they receive these checks?

Mr. L. B. Binford: I presume that is true, that they are so registered, but in all events they are carried on our books as employees for that restricted purpose.

Mr. Mouritsen: At this time I will offer as Board's Exhibit 9 the document marked Board's 9 for identification.

Trial Examiner Kennedy: Is there any objection?

Received in evidence.

(Thereupon, the document above referred to was received in evidence and marked as Board's Exhibit No. 9.) [983]

BOARD EXHIBIT No. 9

A. Gordon	5th & Main	4.50
A. Marcus	6th & Main	5.00
S. Segal	5th & Broadway	5.40
M. Goldberg	5th & Spring	2.10
W. Axelrod	5th & Hill	5.40
G. Brennan	6th & Grand	2.10
L. Sherman	Hill Street Depot	5.00
G. Aronson	4th & Hill	2.00
N. Deutch	4th & Main	4.05
F. Crassen	Temple & Broadway	5.00
W. Schulman	7th & Spring	4.50
R. Charon	7th & Broadway	4.05
H. Levinson	8th & Broadway	4.05
J. Robbins	7th & Hill	3.00
S. J. Berman	9th & Broadway	4.00
T. Cordero, Jr.	12th & Maple	.40
G. Ramerez	12th & San Pedro	2.10
L. Broguiere	12th & Central	.40
F. Borrors	5th & Wall	1.50
I. Blakeman	5th & San Pedro	1.00
O. Geiger	6th & Los Angeles	1.00
L. R. Geiger	5th & Town	1.00
E. D. Lake	5th & Los Angeles	1.75
R. Cordero	9th & San Pedro	1.00
M. Aranda	7th & San Pedro	1.25
A. Fabricant	Hollywood & Cahuenga	3.00
E. Richmond	Hollywood & Highland	3.00
R. G. Price	Sunset & Highland	1.50
Arthur Price	Sunset & Vine	1.50
Sandy Bressman	Hollywood & Western	1.50

M. Blacker	Hollywood & Vine	4.00
F. Bengles	Hollywood & Las Palmas	1.00
H. Silverman	Sunset & Western	1.50
W. P. Wallace	Melrose & Western	2.00
W. Y. Smith	Santa Monica & Vine	1.50
A. Stewart	Santa Monica & Western	3.00
J. Packard	Melrose & Vine	1.50
G. W. Gosek	3rd & La Brea	2.00
F. Sarach	Wilshire & La Brea	3.00
R. Thornberry	Beverly & Western	1.50
N. P. Linowski	Wilshire & Fairfax	3.00
C. O. Knox	3rd & Western	1.50
C. Woods	2nd & Western	1.50
P. Guzman	Wilshire & Western	1.50
D. Overstreet	6th & Western	2.00
N. Stotter	Pico & Rimpau	1.00
J. Harrington	Pico & Western	1.00
F. C. Sowell	Wilshire & Vermont	1.00
J. Kanter	8th & Vermont	3.00
A. Huizing	Pico & Vermont	2.00
P. Polsky	6th & Vermont	1.00
J. C. Goode	10th & Western	1.00
J. E. Coulter	Beverly & Vermont	1.50
D. Lynch	Special Event	2.50
J. Haach	Pico & Robertson	1.50
C. T. Brown	Washington & Rimpau	1.00
A. Laurence	Jefferson & Vermont	3.00
G. Bessonett	Adams & Vermont	1.00
E. Renfro	Washington & Vermont	3.00
R. Kent	35th & Vermont	1.40
H. Basil	Slauson & Western	2.40
J. Bell	48th & Western	2.40
M. Miller	Slauson & Vermont	2.50
F. Reinhart	Slauson & Crenshaw	2.15
S. Goldfinger	Vernon & Vermont	2.10
A. A. Lindsley	54th & Crenshaw	2.15
A. Stillwater	Vernon & Hoover	2.40
F. Winters	Vernon & Western	2.40
G. L. Whitford	54th & Vermont	2.10
V. Newell	54th & Vermont	2.00

C. Parnell	81st & Vermont	1.40
J. Burger	Manchester & Vermont	3.00
J. Martelloti	Florence & Vermont	2.15
S. Kahn	Florence & Broadway	2.40
E. Cralego	Florence & Figueroa	2.00
D. Kadish	Manchester & Broadway	3.50
W. Keeler	Manchester & Figueroa	2.40
C. Spiller	87th & Broadway	1.00
R. Lambert	Washington & Central	2.25
C. Lott	Vernon & Central	2.10
A. Frye	Jefferson & San Pedro	1.90
W. Parhn	Vernon & Long Beach	1.40
A. M. Mendez	Washington & San Pedro	1.90
L. Garcia	Vernon & Main	1.90
L. Velasco	Vernon & Avalon	2.40
J. Apice	Pico & Alvarado	2.00
M. J. Shephard	Washington & Figueroa	2.00
T. H. Ash	Wilshire & Westlake	1.00
J. Crutcher	6th & Alvarado	2.00
E. K. Bogadules	7th & Union	1.00
P. Spampinato	7th & Alvarado	3.00
B. Deane	6th & Rampart	1.00
R. Crawford	Silver Lake & Sunset	1.00
T. R. Mathews	Brooklyn & Soto	2.00
S. R. Duarte	Whittier & Kern	2.00
F. Rosenthal	Jefferson & Main	8.50
T. M. Doyle	Jefferson & Figueroa	1.90
W. B. Wahnish	Santa Barbara & Western	2.40
S. Kaplan	Santa Barbara & Vermont	2.25
J. M. Traub	39th & Vermont	1.40
W. Lloyd	39th & Western	2.40
L. Rosenthal	Figueroa & Santa Barbara	3.50
J. Monroe	Vernon & Broadway	3.00
R. Fernald	Vernon & Figueroa	2.40
A. Monje	7th & Alameda	.40
B. Estada	Olympic & Alameda	.40
J. E. Hill	Compton & Florence	2.40
S. Jaffee	68th & Central	1.40
H. McLean	Slauson & Compton	2.40
C. Hinderer	Slauson & Main	1.90

Mr. Cosgrove: Will it be stipulated, Mr. Mouritsen, that Board's Exhibit 9 has no application to the Los Angeles Times case?

Mr. Mouritsen: That may be so stipulated.

Mr. Hall: And the same stipulation as to the Los Angeles Examiner will be made? [984]

Mr. Mouritsen: That will be made.

Trial Examiner Kennedy: 1-Y? You are stipulating on the definition of terms used in Board's Exhibit 1-Y, is that right.

Mr. Mouritsen: Yes. And in accordance with that matter, Mr. Examiner, in order that the stipulation may coincide, it would be necessary for the union to amend its petition with reference to the Stockholders Publishing Company, Inc., namely, Board's Exhibit 1-Y, so that from the appropriate [985] unit claimed the words "main spot newsboys" would be removed, so that the definition or the appropriate unit claimed would then read "all full-time newsboys and check men who are engaged to sell the News within the city limits of Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys."

Mr. L. B. Binford: Which is in accordance with the manner in which the petition directed against the Herald and Express was amended, is that right?

Mr. Mouritsen: Yes, that is correct.

Mr. L. B. Binford: There is no objection to that amendment.

Trial Examiner Kennedy: It is so ordered. [986]

After Recess:

(Whereupon, the hearing was resumed, pursuant to recess, at 1:00 o'clock, p. m.)

Mr. Mouritsen: In support of this claim to represent the people within the unit claim appropriate so far as the Stockholders Publishing Company, Inc. is concerned, the union is prepared to present for the Trial Examiner's inspection a group of cards, for your inspection and comparison with the list presented by the Stockholders Publishing Company.

Trial Examiner Kennedy: To be compared with Board's Exhibit 9, is that it?

Mr. Mouritsen: Yes, that is right.

Trial Examiner Kennedy: Let the record show I have received the group of cards from the Board's Attorney, reading as follows:

"Card of authorization. Date, blank. I hereby designate and select the Newsboys L. I. Union No. 75, C. I. O. to represent me for purposes of collective bargaining with respect to rates of pay, wages, commissions, bonuses, hours of employment and other conditions of employment."

Place for signature. Place for address. Under which appears: "I sell papers for: blank and blank corner and blank. I understand that the above information is to be [988] used in connection with Labor Board cases."

These cards I have indicated I have received for examination purposes, I find that there are a total

of approximately 193 such cards, 66 of which bear signatures which appear to be the names of persons listed on Board's Exhibit 9.

All of these cards are dated between the dates of February 28th, 1940, and June 7, 1940, inclusive.

I wish the reporter to note that those date limits apply to the examination of cards concerning the Herald and Express case also. I will now return the cards to the attorney for the Board.

Mr. Hall: It will be stipulated, will it, Mr. Mouritsen, that this examination which has just been referred to by the Examiner has nothing to do with the Los Angeles Examiner?

Mr. Mouritsen: That may be so stipulated, except that part that would go to show the nature of the organization, inasmuch as the same organization is also involved with the Examiner.

Mr. Hall: Very well.

Mr. Cosgrove: The same stipulation, Mr. Mouritsen, with reference to the Los Angeles Times?

Mr. Mouritsen: Yes. [989]

Mr. Compton: Have you decided whether you would offer the same stipulation to me?

Mr. Mouritsen: No, I don't think I can, Mr. Compton, inasmuch as many of these same names appear upon the—they are the same check men or wholesalers who operate for the Evening Herald and Express.

Mr. Compton: I understand that all right, but I understand that the evidence appertaining to them appertains to them only in their connection

with the News, and the evidence that you will introduce will be evidence produced from the employees of the News and so on. I mean, no connection with our organization.

Mr. Mouritsen: Yes, I think that may be so stipulated. [990]

FRANK BENJAMIN SMITH

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Smith? A. 323 East Fifth.

Q. In the city of Los Angeles?

A. Yes, sir.

Q. And have you sold papers for the News?

A. Yes.

Q. When did you start to do that?

A. I started with the News in—I believe it was in January—December or January—I am not sure just which it was offhand.

Q. Of this year?

A. Well, yes; December, last year, or January of this year. I am not just sure which.

Q. And where did you start selling papers for the News? A. Fifth and Los Angeles.

Q. And did you handle any other papers, other than the News, at that spot? A. No, sir.

Q. Between what hours did you work at that time?

(Testimony of Frank Benjamin Smith.)

A. From 5:00 to 10:00 in the morning. [991]

Q. And who was your district manager?

A. Lou Law.

Q. And at what price did you receive the News?

A. Well, I paid two cents for each paper. Is that what you mean?

Q. Yes. And you obtained those from Lou Law? A. Yes, sir.

Q. At that spot did you have any racks?

A. Yes, two.

Q. Who supplied those racks?

A. I did—well, the News supplied—you mean the racks, themselves?

Q. Yes.

A. Well, I don't know. I guess the News supplied them. They were on the corner when I took it over, if that is what you mean.

Q. What did you do with reference to those racks?

A. Well, I kept papers in them at all times, and any that were lost I had to pay for them out of my own pocket.

Q. Did anybody instruct you to put the News in those racks? A. Lou Law.

Q. At the time when you started to sell there did Lou Law say anything to you regarding the hours that you were to be on the corner? [992]

The Witness: Yes.

Q. (By Mr. Mouritsen) And where did he say anything to you about that?

(Testimony of Frank Benjamin Smith.)

A. When he told me the corner I was going to take, he told me the hours I was to be there.

Q. Well, where did you speak to him about these matters?

A. In front of the Pacific Electric Station.

Q. Was anyone else there other than you and Mr. Lou Law?

A. Well, I don't remember right offhand. There might have been others around, and then there might not. I don't remember offhand.

Q. Now, would you tell us everything that Lou Law said to you at that time and what you said to him?

A. Well, at that time he just told me that the corner he was going to give me was at Fifth and Los Angeles; I should be there between 4:30 and 5:00 in the morning and work until 10:00 and check in at the Pacific Electric Station.

Q. Has that been the practice that you followed after that time?

A. No, I go on the corner a little earlier now, when I make the corner. [993]

Q. While you were operating on the corner of Fifth and Los Angeles, did you receive any advertising matter from Lou Law? A. No, sir.

Q. Did you receive any of those placards?

A. No. You mean those cards in the racks?

Q. Yes. Did you receive any? A. No.

Q. And about how long did you operate on that corner?

A. Oh, about four weeks, I think.

(Testimony of Frank Benjamin Smith.)

Cross Examination

Q. (By Mr. L. B. Binford) Mr. Smith, was that your first experience when you went to work at the corner of Fifth and Los Angeles?

A. No, sir.

Q. In selling newspapers? A. No, sir.

Q. Where had you been working next prior to that time?

A. I had been working for the Examiner and Times in the mornings in front of the Pacific Electric Station.

Q. How long had you been working there for the Examiner and Times?

A. I am not just sure. [994]

Q. Well, two weeks, or two months, or two years?

A. Well, about—between a month and two months, I think.

Q. What had you been doing before that?

A. Well, I had worked another spot for the Examiner and Times, and then I had worked on the Herald away out in traffic.

Q. How long ago was it that you worked for the Herald and Express selling their papers?

A. About a year ago.

Q. And how long did you continue that work?

A. I continued, I think, for about six months, and then transferred to a new corner for a while until I got a chance to come downtown.

Q. How long have you been selling newspapers?

(Testimony of Frank Benjamin Smith.)

A. Off and on for about two or three years.

Q. Well, which? Two or three?

A. I think I started in March or April of 1938, I believe.

Q. Just a little over two years, then. And how many different corners have you sold on during that period of time?

A. Well, I don't know, because when I first started I worked many corners as relief man for the Examiner nights.

Q. How many corners have you worked on apart from the time you worked as relief man?

A. Well, I have worked about—well, the corners that I [995] have not worked relief on have been about seven or eight.

Q. You have worked on about seven or eight different corners— A. Yes.

Q. (Continuing) ——besides the corners that you worked as relief man? A. Yes.

Q. How long a period of time were you working as relief man before you started working the corners as a regular man?

A. About four or five weeks.

Q. Then over a period of approximately two years you have worked on some seven or eight different corners? A. Yes, sir.

Q. During that time you have sold the Times, sold the Examiner, sold the Express, and you have sold the News, is that right? A. That is right.

Q. Did you have any idea what those racks were

(Testimony of Frank Benjamin Smith.)

for when you first saw them down at the News here two or three weeks ago, when you went to work—or two or three months ago? A. Yes, I did.

Q. You knew what they were for, didn't you?

A. Yes.

Q. You knew absolutely what they should be used for, didn't you? [996] A. Yes, sir.

Q. (By Mr. L. B. Binford) You didn't need any instructions at all on that, did you?

A. No, sir. Just a minute. When he told me about those racks I hadn't seen them.

Q. But I say, if you had seen them, you would have known what they were for, wouldn't you?

A. Yes.

Q. Didn't I understand you to say the racks were on the corner when you went there?

A. Yes, they were there.

Q. You say you pay two cents for the paper?

A. Yes.

Q. That is the News? A. Yes.

Q. You pay that to Mr. Law? A. Yes.

Q. And you say you never received any advertising placards of any kind?

A. Well, not on that one particular corner.

Q. That's what I mean. Did you ever sell the News before?

A. I hadn't sold the Daily News before. I had sold the Evening News before.

Q. Where did you sell the Evening News? [997]

A. Pico and Rimpau.

(Testimony of Frank Benjamin Smith.)

Q. When?

A. Last October and November.

Q. And who was your district man then?

A. Arnold Blum.

Q. Were you on a main spot at that time?

A. The only spot—yes, the main spot.

Q. Did you have any other boys that you counted out papers to?

A. Well, I had one other boy that I counted out papers to. That wasn't worked as it does on regular corners. That was worked a little different out there.

Q. Do you sell any copies of the Times in the morning? A. No, sir.

Q. Never?

A. Unless it is for the other boy on the corner when he is away.

Q. I didn't ask you "unless." I said, do you sell any copies of the Times in the morning?

A. If the other boy is off the corner, just for him.

Q. Do you sell any copies of the Examiner?

A. In the same case.

Q. Under the same circumstances?

A. Yes. And then I sell the Examiner sometimes on Sunday mornings. [998]

Q. Do the boys who sell the Times and the boys who sell the Examiner sometimes leave papers with you for you to sell?

A. No; they don't leave any for me to sell ex-

(Testimony of Frank Benjamin Smith.)

cept when they go and eat they leave their papers there, and if anybody wants one I give it to them.

Q. You make no profit out of that?

A. I don't make any profit out of that.

Q. Do you sell any Times or Examiners during the mornings, or did you while you were on this corner, out of which you made any profit at all?

A. I do on Sunday mornings now.

Q. But I mean during the time you were on the corner of Fifth and Los Angeles.

A. Oh, no.

Q. Did you handle any other papers at all there?

A. No, sir.

Q. Or any magazines? A. No, sir.

Q. None of any kind? A. Of any kind.

Q. While you were working on the corner of Fifth and Los Angeles you checked in, you said, to the P. E. Station?

A. Yes, in front of the P. E. Station.

Q. And when would you check in?

A. About ten o'clock. [999]

Q. Each morning? A. Yes.

Q. And would it be at that time that you would pay for the papers? A. Yes.

Q. You wouldn't pay for them until after you had sold them?

A. After I had sold them.

Q. And then those you didn't sell you returned?

A. Yes.

Q. And got full credit for them? A. Yes.

(Testimony of Frank Benjamin Smith.)

Q. You never had any objection to using those racks, did you?

A. Well, once in a while I used to lose quite a few. That is the only objection.

Q. Did they help you sell your papers?

A. Well, a few, yes.

Q. The way they would be lost would be because somebody would steal one, isn't that true?

A. Yes.

Q. Did you know when you went on the corner at Fifth and Los Angeles what time the first edition of the News came on the street?

A. The first edition of the News? [1000]

Q. Yes, come on the street.

A. Yes, I knew what time the first edition came on.

Q. You already knew that, did you?

A. Yes.

Q. What time was it?

A. The first edition comes on about between 10:30 and 11:00 at night.

Q. Does that come on the street at that time or is that the time the first edition is printed?

A. That is the time it comes on the street.

Q. On the night before? A. Yes.

Q. That it is dated?

A. No, it is dated for—like tonight, it will come out dated for tomorrow morning.

Q. And it comes on the street when?

A. Between 10:30 and 11:00, I believe.

(Testimony of Frank Benjamin Smith.)

Q. Had you ever sold that paper?

A. No, sir.

Q. Do you know whether that paper is sold on the streets or not? A. Yes.

Q. But you never sold it?

A. I never sold it.

Q. And did you know what time, when you went on Fifth and [1001] Los Angeles, what time the fourth edition came out? A. Yes.

Q. What time was that?

A. Four o'clock.

Q. You knew that was the time that paper was published? A. Yes.

Q. Is that the edition that you sold?

A. Yes.

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Smith, where are these racks situated?

A. One is on the—is in front of McDonnell's restaurant, and the other one is on the northeast corner.

Q. And where did you carry on your operations? Where did you sell?

A. In front of the Motor Transit Depot.

Q. How would the district manager deliver those papers to you at your spot?

A. The first ten at 4:30, between 4:30 and 5:00, I picked up at Fifth and Wall; and he would bring the rest in the car to the corner.

(Testimony of Frank Benjamin Smith.)

Q. How did you know you were to pick up your papers at Fifth and Wall? [1002]

A. He told me that. After I got down to the corner the first morning, or when I checked in—I forget just when it was—he told me the next morning to pick ten up at Fifth and Wall.

Q. And then how many times, as a general matter, does he come around the district a day?

A. Once. After he brings them at five o'clock he comes around once more usually.

Q. Where did you check in at the conclusion of your operations?

A. In front of the Pacific Electric Station, the P. E. Building, Sixth and Main.

Q. How far was this rack in front of McDonnell's restaurant from the spot where you sold papers yourself?

A. Well, it was about—across the street and about three doors down.

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony of Frank Benjamin Smith has no application to the Times case? [1003]

Mr. Mouritsen: It may be so stipulated.

Mr. Hall: May the same stipulation be made with respect to the Los Angeles Examiner?

Mr. Mouritsen: Yes, I think so.

Mr. Compton: And the same as to the Los Angeles Evening Herald and Express?

Mr. Mouritsen: That may be so stipulated.

EDWARD VICTOR SMITH

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) And where do you live, Mr. Smith? A. 523 East Fifth Street.

Q. Do you at present sell the News?

A. I do.

Q. Where do you operate?

A. At Eighth and Main.

Q. Do you sell any other papers other than the News?

A. I carry the Times and Examiner for the convenience of customers that may need them, but I do not work for the Examiner or Times. [1004]

Mr. L. B. Binford: We move that the answer of the witness "I do not work for the Examiner or Times" be stricken as, first, a voluntary statement and not responsive to the question, and, second, on the ground it is a conclusion of the witness.

Trial Examiner Kennedy: Motion denied.

Q. (By Mr. Mouritsen) Where did you first start to sell the News, Mr. Smith?

A. Temporarily, at Eighth and Broadway.

Q. And who put you on your present spot?

A. Mr. Lou Law.

Q. Who is he? [1005]

A. That is our distributor, the district manager, as he is called.

(Testimony of Edward Victor Smith.)

Q. District manager for the News; is that correct? A. Yes, sir.

Q. When did he put you on your present spot?

A. December 4, 1939.

Q. And did he say anything to you at that time regarding the territory in which you were to sell?

The Witness: Yes, he did.

Q. (By Mr. Mouritsen) Who was present at this conversation other than yourself?

A. Just he and I.

Q. (By Mr. Mouritsen) Yes, where was the conversation? Where did it take place?

A. At Eighth and Broadway when he came by to take me to [1006] this other corner.

Q. Now, will you state what Mr. Law said to you and what you said to Mr. Law?

A. Mr. Law just told me he was going to transfer me to the corner of Eighth and Main, and there would be a man there to show me around where the racks was, and where I was to go. That was all there was to it.

Q. I see. And after that time did you go see this man—this other man? A. Yes, sir.

Q. Who was that other man?

A. That was the man that preceded me. The other man that was there temporarily.

Q. Did this other man show you where the racks were? A. Yes, sir.

Q. With reference to the territory where you were to sell what did this other man do?

(Testimony of Edward Victor Smith.)

A. Oh, he just showed me around, that's all.

Q. Where do you receive delivery of the first edition of the News?

A. Right now at Seventh and Main, but I have that at my own request.

Q. Well, of whom did you make that request?

A. At the beginning of this year.

Q. Well, from whom? [1007]

A. From Mr. Law.

Q. After you receive the first edition, do you receive later—does he come around later with different copies?

A. He comes around with the balance of my quota, what I need, he comes around one hour afterward.

Q. And where do you take delivery of those?

A. Eighth and Main.

Cross Examination

Q. (By Mr. L. B. Binford) What time do you quit work, Mr. Smith? A. Around ten o'clock.

Q. Around ten in the morning? A. Yes, sir.

Q. When do you check in?

A. At the same time.

Q. With whom?

A. Mr. Law. Well, right now he has got a relief man there, but he is our regular district man.

Q. Ordinarily with Mr. Law? A. Yes, sir.

Q. You say you sell the Examiner and Times for the convenience of your customers. A. Yes, sir.

Q. Do you make any profit on that sale? [1008]

(Testimony of Edward Victor Smith.)

A. Yes, I buy them at wholesale out of my own pocket.

Q. So, you make a profit on each copy of the Examiner and a profit on each copy of the Times that you sell for the convenience of your customers, is that right?

A. Yes, sir. I buy them from another man—from another corner.

Q. But you buy them at wholesale price?

A. Yes, sir.

Q. Do you sell any other papers there?

A. Just the News.

Q. That is what I mean, apart from the News, Times and Examiner? A. No, sir.

Q. You do not sell the Herald and Express at all?

A. No, sir.

Q. You do not deal in magazines there?

A. No, sir.

Q. You do not sell the People's World?

A. No, sir.

Q. Are you a member of the Newsboys Union Local No. 75, Los Angeles?

A. Yes, sir, I am.

Q. When you conclude your morning about ten o'clock do you return papers that you have on hand that are unsold? A. Yes, sir. [1009]

Q. You do not have to pay for those, do you?

A. No, sir.

Q. And do you give your district man some idea as to how many papers you may want from time to time, or do you leave that entirely to him?

(Testimony of Edward Victor Smith.)

A. Several mornings I have to make a different —I have to change.

Q. Then you have that within your own control as to how many you want to order?

A. I usually tell him the day before.

Q. As to how many you will want?

A. Yes, sir.

Q. Where were you receiving the delivery of papers prior to the time the change was made at your request to Seventh and Main?

A. Eighth and Broadway—Eighth and Main.

Q. And you prefer to have them over at Seventh and Main?

A. Yes, because I had to run the flower market. It is more convenient for me to get my papers at Seventh and Main instead of Eighth and Main at that time.

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Smith, how many copies of the Times and Examiner do you sell on an average in the morning?

A. Five or six, that's all. [1010]

Q. And how many copies of the News do you generally sell per morning?

A. Monday, Wednesday, Friday and Saturday I may sell about 125; other mornings it will be about 90, that's all. Tuesday and Thursday the market is practically closed.

Q. At what time in the morning do you start?

A. Around 4:30.

(Testimony of Edward Victor Smith.)

Q. Is that the same on every day of the week?

A. Yes, sir.

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony of Victor Smith has no application to the Los Angeles Times case?

Mr. Mouritsen: It may be so stipulated.

Mr. Hall: May the same stipulation be made with reference to the Los Angeles Examiner?

Mr. Mouritsen: That may be so stipulated.

Mr. Compton: May the same stipulation be made with relation to the Los Angeles Evening Herald and Express?

Mr. Mouritsen: That may be so stipulated. [1011]

SIDNEY GLEN MURRAY

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Murray? A. 1921 South Orchard.

Q. Is that in the city of Los Angeles?

A. Yes, sir.

Q. You are district man for the News, is that correct? A. That is right.

Q. What editions of the News do you handle?

A. The 4 Star edition.

(Testimony of Sidney Glen Murray.)

Q. Just that one edition, is that correct?

A. That is right.

Q. Will you explain briefly what your duties in connection with the circulation of that edition of the News are?

A. To deliver to the corner boys, racks and news stands.

Q. Will you describe briefly just how you operate, what you do in the morning, and just cover the entire day, so far [1012] as your duties are concerned?

A. Well, I start in the morning at approximately four o'clock and I deliver all these papers to the respective spots, a certain amount of papers, and then I make a re-cover of those spots to see if they have enough papers on all of them.

The Witness: And then I return and collect for all those excepting the news stands, which I collect every month—once a month.

Q. (By Mr. Mouritsen) Do you supply certain newsboys—strike that.

Within what district do you operate?

A. I operate from Washington to 56th on Broadway and Main and Avelon, and from Washington at Vernon on Central over to Alameda.

Q. And do you supply newspapers in that district? A. Yes, sir, ten of them.

Q. Ten newsboys? A. Right.

Q. And when do you supply those newsboys with papers?

A. From 5:00 to 6:00 o'clock.

(Testimony of Sidney Glen Murray.)

Q. How long do they remain on their respective spots?

A. Well, different times. Some of the boys are school boys and others are men, and I check the school boys in not later than 8:00 o'clock, and I check the men in from 8:30 [1013] until 9:30.

Q. How many of the boys or men do you supply with papers the first time you go around the district?

A. Well, I only supply three men the first time I go around because I have to pick the boys up and bring them to their corners before I supply their papers.

Q. And about how long after you make your initial coverage is it before you make your re-coverage?

A. Well, I start my first run at 4:00 o'clock and end that at 6:00, and start my re-covery at 7:00.

Q. Do you return to the plant of the News between runs?

A. Well, not necessarily, no. I just happen to end up near the plant and I eat my breakfast near there; that is all. I don't have to return there at all.

Q. And at what price do you supply the newsboys in your district with papers?

A. Two cents apiece, with the exception of those that I give a little bonus, but that personally is between me and the boys. That don't concern the company at all.

Q. And so far as the price at which you furnish

(Testimony of Sidney Glen Murray.)

papers to the newsboys is concerned, is that fixed by the company or by you?

A. That is fixed by me.

Q. Have you recently put any newsboys on any of those corners? [1014]

A. Well, I don't know what you mean by "recently."

Q. Well, within the last year.

A. Oh, yes, I have put on two boys and one man.

Q. Would you outline in general what you say to those people when you put them on the corners?

A. Well, nothing only that they come to me for a job and I ask them if they want to cover that spot and if they like it, why, to keep it and if they don't I will have to look up somebody else, either me or the Examiner or Times fellow.

Q. Do any of those boys in your district handle other papers?

A. They all handle all three of them, my boys.

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony of Sidney Glen Murray has no application to the Times case?

Mr. Mouritsen: Yes, that may be so stipulated.

Mr. Hall: Will you enter into the same stipulation with reference to the Los Angeles Examiner?

Mr. Mouritsen: It may be so stipulated.

Mr. Compton: And the same stipulation with reference to [1015] the Los Angeles Evening Herald and Express?

Mr. Mouritsen: It may be so stipulated. [1016]

JAMES V. APICE

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Apice, where do you live? A. At 1236 South Alvarado.

Q. That is in the city of Los Angeles?

A. Yes, sir.

Q. And do you at present sell the Evening Herald and Express? A. Yes, sir.

Q. And the News? A. That is right.

Q. Where do you sell?

A. Pico and Alvarado.

Q. How long have you been operating there?

A. About seven years.

Q. From whom did you obtain the corner?

A. Oh, a friend of mine.

Q. Who was that?

A. Well, some fellow that was working on the corner.

Q. Who is your News district manager at the present time?

A. Well, there has been about three—two different men in the last three weeks because the regular district man is [1017] on vacation right now.

Q. Who is your regular district man on the News?

A. To tell you the truth, I don't know his name.

Q. To refresh your recollection, isn't your News district man Ivan Moore?

(Testimony of James V. Apice.)

A. Well, I know his first name, Ivan.

Q. Do you receive a check from the News?

A. Yes, sir.

Q. And about how long have you received that check?

A. Well, I believe it is about two years.

Q. (By Mr. Mouritsen) Well, you say you started to receive the check about two years ago?

A. Yes.

Q. And do you know why or for what work you receive that check?

A. Well, to tell you the truth, I don't.

Q. Well, haven't you ever asked your News district man why he gives you that check or why you receive that check?

A. Well, I don't just know if I know.

Q. Do you count papers out to—or count the News out to [1018] certain other boys? A. Yes.

Q. And how many boys?

A. Well, I got three boys working for me, but I only check one boy in.

Q. But you count them out to three, is that correct? A. Yes.

Q. But you check in only one? A. Yes.

Q. Now, do any of those boys work on what is known as a traffic spot? A. One.

Q. Will you explain what a traffic spot is?

A. Well, working in a safety zone. [1019]

Q. (By Mr. Mouritsen) Did your News district manager ever say anything to you about the boy working in the traffic spot? A. Yes.

(Testimony of James V. Apice.)

Q. And when did you have any such conversation?

A. Well, since the beginning, when the Herald newsboys took over the selling of the News.

Q. And where did you have that conversation?

A. Well, right on the corner.

Q. Was anyone else present?

A. I don't believe so.

Q. Do you recall the name of the district manager at that time?

A. Well, the same name, Ivan.

Q. Now, will you state what he said to you and what you said to him?

A. Well, as it has been quite a long time, I can't recall what was said.

Q. Well, not the exact words, but just in substance what he said to you and what you said to him.

A. Well, the agreement between us was for me to get the boy working—— [1020]

Q. (By Mr. Mouritsen) Well, now, Mr. Apice, will you state just in substance what Ivan said to you and what you said to Ivan, and, if you can, just say who said what, what you said and what Ivan said.

A. Well, you know, it has been a long time, and I can't just remember what was said. [1021]

Q. No, not the exact words; that would obviously be impossible. Just in substance what he said to you and what you said to him.

(Testimony of James V. Apice.)

A. Whatever I said before, I would just have to repeat it.

Q. Well, what did Ivan say to you at that time?

A. Well, he says to try to keep the boy out there at a certain time.

Q. (By Mr. Mouritsen) And then what did you say? A. I said it was all right.

Q. And then what did he say, if anything else?

A. No, he didn't say anything else that I remember.

Q. Well, did he say anything about the display, the way you were to hold the paper?

A. Oh, yes.

Q. Well, now, tell us just what he said to you about that.

A. Well, he told me to keep the News on the outside of the Herald all the time, and keep my News display on the corner as much as I could in a place where it could be seen.

Q. And is that about all substantially that he said to you at that time?

A. That is all that he said.

Q. Did you say anything else? [1022]

A. No, sir.

Q. Is that the way you have operated since that time? A. Yes, sir.

Q. You have kept the boy out there?

A. Yes, sir.

Q. Were you ever taken off your corner, Mr. Apice? A. Yes, sir.

(Testimony of James V. Apice.)

Q. Who took you off your corner?

A. My district man, Mr. Hutchinson.

Q. For what paper is he the district man?

A. The Evening Herald.

Q. And about when did he do that?

A. Well, I don't quite remember the date.

Q. Well, if you can, tell us the month or the year. A. I don't remember.

Q. How long ago was it?

A. I think it has been quite a long time. Maybe a year.

Q. Well, is there any way you could fix that more definitely? A. (Pause.)

Q. How long did you remain off the corner?

A. I believe four days.

Q. And before you went back, did you have any conversation with anyone connected with the Herald downtown here?

A. Yes, sir; I believe it was Mr.—somebody in the office. I have forgotten the name right now. [1023]

Q. To refresh your recollection, was that a Mr. Neal? A. Yes, sir.

Q. And where did you talk with him?

A. Over in the office—in the Evening Herald office.

Q. Was anyone else present other than you and Mr. Neal? A. No, sir.

Q. (By Mr. Mouritsen) I believe you said, Mr. Apice, that it was over a year ago, is that correct?

A. Yes, sir, that is right.

(Testimony of James V. Apice.)

Q. Well, how much more than a year ago was that?

A. I don't quite remember the right month.

Q. Well, was it in the summer or——

A. (Interrupting) I believe it was in the end of the summer.

Q. Well, by "the end of" do you mean like August or September or——

A. (Interrupting) Like September or October.

Q. Would that be 1939?

A. No. I believe 1938.

Q. I see. October or November, 1938, is that correct? [1024] A. Yes, sir.

Q. Will you state what you said to Mr. Neal and what Mr. Neal said to you?

A. Well, I went to Mr. Neal and asked him the reason why I was fired and he tried to say somebody made some accusation against me, and the reason he says I was fired is because there was so much going in the papers about that kind of complaint that was made against me.

I says—I said to Mr. O'Neal it was no such a thing because my name was clean and I could get any witness in my district to—you know, voice for me, and that is all there was to it.

And he says he was going to think it over and let me know about it.

Q. After that you did go back to work?

A. Yes, sir. [1025]

Q. (By Mr. Compton) You testified that an accusation was made against you? [1026]

(Testimony of James V. Apice.)

A. Yes, sir.

Q. What was the nature of the accusation?

A. Well, Mr. Neal claimed I passed a wise remark against some girls passing the corner. He claimed that I passed some remarks.

Q. To some woman passing the corner?

A. Yes, sir. But I was not guilty of that.

Mr. Cosgrove: May we have a stipulation, Mr. Mouritsen, if you please, that the testimony of Mr. James V. Apice does not apply to the Los Angeles Times?

Mr. Mouritsen: That may be so stipulated.

Mr. Hall: Will the same stipulation be made with reference to the Los Angeles Examiner?

Mr. Mouritsen: Yes, that may be so stipulated. [1027]

THOMAS HILLIARD ASH

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Ash, where do you live? A. 911 South Maple.

Q. And do you sell the News and the Evening Herald and Express at this time?

(Testimony of Thomas Hilliard Ash.)

A. Yes, sir.

Q. Where do you operate?

A. Wilshire and Westlake.

Q. Do you at the present time receive a check from the Evening Herald and Express?

A. I receive one from the Evening News.

Q. Well, do you receive one from the Herald and Express? A. No, sir.

Q. During what hours do you sell at that place?

A. From 11:30 to 7:00 at night. [1028]

Q. And who is your News district manager?

A. Robinson is his last name.

Q. What duties do you perform for the News for which you receive the check?

A. I sell the News for them and I deliver two of them.

Q. Do you have any boys on that corner to whom you count out copies of the News?

A. I have one.

Q. Do you also give the copies of the Evening Herald and Express, count those out to him?

A. Yes, sir.

Mr. Cosgrove: Will it be stipulated, Mr. Mouritsen, that the testimony of Thomas Hilliard Ash has no application to the Times case?

Mr. Mouritsen: It may be so stipulated.

Mr. Hall: Will the same stipulation be made with reference to the Los Angeles Examiner?

Mr. Mouritsen: It may be so stipulated. [1029]

ISAIAH JACOB MOORE

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Moore? A. 625½ West 47th Street.

Q. In the city of Los Angeles? A. Yes.

Q. Are you a district manager for the News?

A. I am.

Q. And what editions of the paper do you handle?

A. I handle the Five Star, Six Star, Eight Star, Nine Star and Ten Star.

Q. Will you explain briefly what your duties are with reference to the circulation of those papers?

A. I take the editions around to the boys, to racks and to news stands. I check them in. I hand the papers out to the boys and also check them in for them, and the racks the same way.

Q. And in what district do you operate?

A. I have Station Six. It is in the southwest part of town, between Hoover and Crenshaw, and between Slauson and Santa Barbara.

Q. And will you explain briefly how you operate, how you [1030] perform your duties?

A. I go around each edition and put out papers to boys and racks and news stand, and at the end of the day I collect—I check the boys in and also the racks.

(Testimony of Isaiah Jacob Moore.)

Q. Do you supply a number of newsboys in that area?

A. Yes, I have ten all-day boys that work all day for me, every edition, and I have about twenty to thirty boys that work after school.

Q. During what hours do you work?

A. I work from approximately 10:20 in the morning until 6:15 at night.

Q. And during what hours do the newsboys whom you supply operate?

A. Well, ten of them work from—I don't know exactly what time they get there, but they are there when I bring my first edition around and they are there when I leave at night. Did you want to know about the boys that work after school?

Q. Yes; during what period of the day do they work?

A. I imagine approximately 3:30 until 7:00 o'clock.

Q. They secure their papers in turn not from you but from these other newsboys?

A. That is correct.

Q. How long have you been a district manager in this district? [1031]

A. In this district I have been there a little over two years, between two and three years.

Cross Examination

Q. (By Mr. L. B. Binford): About how many newsstands do you service, Mr. Moore?

A. Approximately thirty-five to forty.

(Testimony of Isaiah Jacob Moore.)

Q. That is, you deliver papers each day to thirty-five or forty news stands?

A. Just a moment on that. Do you mean news stands, businesses that handle my papers, or racks?

Q. No; I meant news stands. You spoke of news stands.

A. Well, news stands, I have about twenty-two of them.

Q. Do you buy your papers at wholesale from the News? A. Yes, sir.

Q. Then you sell them out to the boys?

A. Yes, sir.

Q. And you get 1¾ cents?

A. Yes, sir, that is correct.

Q. For each paper? A. Yes, sir.

Q. And likewise in dealing with these news stands, you sell your news stands at 1¾ cents?

A. I sell them at two cents to the news stands.

Q. You are the sole arbiter, then, of what price you are [1032] going to get for your papers, aren't you? That is, you can sell them to the news stands at two cents and to the newsboys at 1¾, if you want to?

A. No. It is supposedly 1¾ to all newsboys.

Q. That is what I say, you sell them to the newsboys at 1¾ cents, and to the new stands at two cents; is that right?

A. Yes, sir, that is correct.

Q. And on these news stands that you speak of —just what are they?

(Testimony of Isaiah Jacob Moore.)

A. They are individual businesses, confectionery stores, or sweet shops, or things of that kind —some drug stores.

Q. They are all within the territory that you operate in? A. Yes, sir.

Q. About how many afternoon school boys do you have in your——

A. (Interrupting): Approximately twenty to thirty.

Q. Do you know what time they come on?

A. Well, they are all supposed to be there at 3:30.

Q. You do not know for sure what time?

A. No, I do not know for sure.

Q. You are not sure when they come on?

A. No, I couldn't very well be.

Q. They are supposed to come right away, quite soon after school? [1033] A. Yes, sir.

Q. And you are not there to check up to see when they get there?

A. No. I haven't any way of checking on them.

Redirect Examination

Q. (By Mr. Mouritsen): Who fixes the price of 1¾ cents for the papers that you deliver to the newsboys?

A. Well, that is set by the office, the News office.

Q. Do your receive a check from the Stockholders Publishing Company for your work with them?

(Testimony of Isaiah Jacob Moore.)

A. Well, I have a different setup than that. I have a minimum guarantee.

Q. Do you have in your district, Mr. Moore, newsboys who receive checks from the News?

A. Yes, I do. I have ten of them.

Q. And you do not pay them those checks?

A. No, I don't. [1034]

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony of Isaiah Jacob Moore has no application to the Times-Mirror case?

Mr. Mouritsen: So stipulated.

Mr. Hall: Will the same stipulation be made with respect to the Los Angeles Examiner?

Mr. Mouritsen: So stipulated.

Mr. Compton: The same stipulation as to the Los Angeles Evening Herald and Express?

Mr. Mouritsen: So stipulated. [1035]

DUTTON F. O'BRIEN

called as a witness by and on behalf of the respondent, the Stockholders Publishing Company, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. L. B. Binford): You have been sworn, Mr. O'Brien? A. Yes, I have.

Q. And you were here in the courtroom and heard the testimony of the witness Mr. Moore?

[1038]

A. I was.

(Testimony of Dutton F. O'Brien.)

Q. I will ask you whether or not the Stockholders Publishing Company, or the News, fixes the price at which its district men sell the paper or may sell the papers to newsboys or news stands?

A. It does not.

Q. Is that function of fixing the price at which the paper is sold to the newsboys or to the so-called wholesalers and to the news stands entirely in the discretion of the district man? A. It is.

Q. You sell—by "you" I mean the Stockholders Publishing Company sells its papers to these district men at a certain wholesale price, is that correct? A. Yes.

Q. And they in turn sell to the news stands and to the newsboys, is that correct?

A. That is right.

Q. Their profit is the difference between what they buy for and what they sell for, is that correct?

A. Yes.

Q. And it is discretionary with them as to their selling price? A. Yes. [1039]

Mr. Cosgrove: May it be stipulated that the testimony given by Mr. Dutton O'Brien since he was called to the stand after the afternoon recess today has no application to the Los Angeles Times-Mirror case?

Mr. Mouritsen: It may be so stipulated.

Mr. Hall: May the same stipulation be made with reference to the Los Angeles Examiner?

Mr. Mouritsen: It may be so stipulated.

Mr. Compton: And the same to the Los Angeles Evening Herald and Express?

Mr. Mouritsen: So stipulated.

PATRICK COMORRE

called as a witness by and on behalf of the respondent, the Stockholders Publishing Company, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. L. B. Binford): Mr. Comorre, you have been [1040] heretofore sworn and testified in this proceeding, have you not? A. I have.

Q. I believe you testified you are an organizer for the Newsboys Local Union 75 C.I.O.?

A. At the present time?

Q. No. That you were. A. I were.

Q. And during what period of time were you organizer?

A. Well, from about July, 1938, to about July, 1939.

Q. In October of 1938 you were actively engaged in organization work?

A. That is right.

Q. And during that period of time did you attend various meetings of the boys' union?

(Testimony of Patrick Comorre.)

A. Yes.

Q. And as an organizer did you ask that meetings be called from time to time?

A. Well, some meetings—the regular monthly meetings.

Q. Yes.

A. That they vote on themselves, and there is some unit meetings and special meetings that they hold.

Q. You called some of the special meetings, did you not?

A. Well, through the secretary, yes. [1041]

Q. And you would give out notices or pamphlets of sundry kinds, or dodgers would be given out calling those meetings?

A. Yes. I have distributed those cards.

Mr. L. B. Binford: Will you mark that Stockholders' Exhibit next in order?

(Thereupon, the document above referred to was marked as Respondent Stockholders' Exhibit No. 3 for Identification.)

Q. (By Mr. L. B. Binford): Mr. Comorre, I am going to show you a sheet of paper containing certain printed matter and designated "Special meeting of the Herald and News Unit of the Los Angeles Newsboys L. I. Union 75 C.I.O.," called for 8:00 p. m. Tuesday night, October 11, 121½ South Broadway, and purporting to bear your printed signature as follows: "Pat Comorre, Organizer Newsboys L. I. U. —"

(Testimony of Patrick Comorre.)

I will show you that first.

"No. 75, C. I. O.," and would ask you if you recognize such a pamphlet or notice? Just a moment and I will have it for you, Mr. Comorre.

A. (Examining document): That's right. I recognize it.

Q. And you distributed some of those, did you not, caused [1042] some of them to be distributed?

A. That is right.

Mr. L. B. Binford: Before further examination, I would like to offer this in evidence as Stockholders No. 3. Any objection?

Trial Examiner Kennedy: Received.

(Thereupon, the document above referred to was received in evidence and marked as Respondent Stockholders' Exhibit No. 3.)

Mr. Mouritsen: If I may ask one question before it is received.

Mr. Comorre, was that issued by the Union?

The Witness: That is right.

Q. (By Mr. L. B. Binford) Did you attend this meeting that is referred to in this Stockholders Exhibit No. 3, Mr. Comorre? A. That is right.

Q. And I direct your attention to the fact that while the date to the extent of 8:00 p. m. Tuesday night, October 11, appears at the foot thereof, and again at the commencement thereof, 8:00 p. m., Tuesday night, October 11th, that no year is fixed. Do you know what year that was? A. Yes.

(Testimony of Patrick Comorre.)

Q. What year was it? [1043]

A. 1938. [1044]

Q. All right. Now let me ask you this: Did you at this meeting consider the matter of setting a standard guide for all newsboys and to establish a permanent arrangement with respect to the handling of their papers for the News and the Herald and Express?

A. Well, you ask that question, yes.

Q. Was it a fact as stated in this pamphlet or notice, that it had come to your particular knowledge that these particular newsboys with the News and Herald and Express seemed to have a different opinion on the matter of their methods of selling the Evening Herald and Express and the News?

A. That was one of the reasons for holding the meeting, that was one of the reasons we held the meeting.

Q. And was it a fact the different boys didn't seem to know [1045] just what was expected of them?

A. Well, I can't answer that question without a little explanation.

Mr. L. B. Binford: Go ahead.

The Witness: You see, there was so much confusion after the consolidation——

Q. (By Mr. Binford, Interrupting) May I interrupt you and direct your attention, however, to the fact this was something over a year after the sale of the papers jointly had started?

(Testimony of Patrick Comorre.)

A. That is right.

There was a lot of confusion about how the papers should be held, by the district men of the papers. In other words, in one section the district man would tell one of the newsboys to duck t[he] News; in other words, they would holler about why in the hell don't they give the News a break, as was mentioned this morning.

By that I mean not to hide it or fold it up in such a way you couldn't see it. So one person would hold this way and another person would hold that way, and one district man would tell them that is wrong, and then another district man would tell them this is wrong, and there was so much confusion that I went to talk to some of the district men and from what I gathered, they were all trying to tell them the same thing only they were getting confused, and the newsboys were wonder- [1046] ing who to listen to in order to hold this paper out. They didn't know whether to listen to the News district man or to the Herald district man, so in order to clarify that particular thing, after talking to various district men on the News and—I am pretty sure we met in this regard with Mr. Reichert. I believe I went down—yes, I talked to Mr. Reichert about this in Mr. Reichert's office.

I think present was——

Q. (Interrupting) Now, are you still explaining about this pamphlet?

A. That is right. That is why it came about.

(Testimony of Patrick Comorre.)

In other words, I went down to see where these squawks were coming from.

Q. Just a minute, Mr. Comorre. I didn't ask you how you happened to call this meeting, nor how it came about. Do you know as a matter of fact that the record discloses the fact the same newsboys had been selling the Herald and Express and the Evening News since on or about August 25, 1937? A. Yes, I do know that.

Q. And this meeting that you referred to was called in October of 1938? A. That is right.

Q. And this same state of confusion respecting how the papers were to be held or sold had been in existence and [1047] continuing, in your opinion, ever since August of 1937, is that correct?

A. That is right.

Q. And during that period of fourteen or fifteen months it was your opinion when you called this meeting that still the newsboys didn't know what was expected of them, is that correct?

A. Well, there was so many different orders. That is, some said this——

Q. (Interrupting) Well, I say, is that correct?

A. Yes.

Q. And at that time, from your investigations as an organizer and from the information that you had received as an organizer, you had reached the conclusion, had you, that after a period of some fourteen or fifteen months of joint operations in selling, that each newsboy seemed to have a different opinion on the matter, is that right?

(Testimony of Patrick Comorre.)

A. Well, I wouldn't say "each." The various groups had here and there. It all depended on what district men they worked for.

Q. I direct your attention to the fact this pamphlet, which bears your printed signature and which you have identified, says:

"And each newsboy seems to have a different opinion on the matter." Was that your impression at that time? That [1048] is, by "that time" I mean when this pamphlet was gotten out.

A. You say each newsboy——

Q. (Interrupting) I am quoting from what you say, not what I am saying.

A. I think that is in the pamphlet, not what I said.

Q. That is right. This is the pamphlet that bears your signature in printing, and you said you recognized it.

A. Well, they may use my name as a organizer of the union. That is customary in pamphlets.

Q. I direct your attention to the fact that the concluding clause in this pamphlet reads: "Be present at this meeting and bring your best suggestions to settle this question."

A. That is right.

Q. Is that one of the purposes of the meeting?

A. That is right.

Q. To consider the matter of the method of selling and to get suggestions from various members of the Newsboys Union?

(Testimony of Patrick Comorre.)

A. Well, we were trying to get suggestions so we could satisfy everybody concerned, so there wouldn't be any more confusion.

Q. Do you remember, was any agreement drawn up?

A. No, no particular agreement. No—no written agreement; that is, you mean in particular the last part of that?

Q. Well, I read from the notice again: "Also to draw up an agreement by which Herald and News newsboys can co- [1049] operate satisfactorily with both the Herald district men and the News district men." [1050]

The Witness: No.

Cross Examination

Q. (By Mr. Mouritsen) Mr. Comorre, I note that this exhibit that is Stockholders' Exhibit 3 is headed "A special meeting of the Herald and News Unit." Will you please explain what the Herald and News Unit is?

A. Well, the Herald and News Unit is the group of newsboys that sells the Herald and News, to take up their problems—that meet to take up their problems that concerns both papers.

Q. Well, has that been a practice, for the newsboys who handle Herald and Express to meet in a unit?

A. Yes. They are both practically the same newsboys that handles both papers.

Q. There are other units in the union?

(Testimony of Patrick Comorre.)

A. Why, yes.

Q. What other units are there?

A. The Examiner and the Times and the People's World. At one time we had a Ham and Egg unit, when that paper was in existence; the Sports Weekly unit, when it was in existence. [1051]

Q. Are those general membership meetings of the union?

A. No; just that unit, of that particular newsboy selling that paper.

Q. In addition to these unit meetings, does the union hold any other meetings?

A. Yes, they do.

Q. What other meetings?

A. General membership meetings.

Q. Of all newsboys?

A. That is right. Of all the units. [1052]

Wednesday, June 19, 1940.

Met, pursuant to adjournment at 9:30 o'clock A. M. [1057]

Mr. Mouritsen: Mr. Examiner, we have a number of stipulations which we have discussed, and which we desire to offer.

Mr. Binford and Mr. Comorre, for the purposes of this proceeding, that is, Stockholders Publishing Co., Inc., XXI-R-927, will it be stipulated that the following terms in the second amended petition, Los Angeles Newsboys Local Industrial Union No.

75, C. I. O., shall be deemed to be the Union's intended meanings—— [1059]

Mr. Mouritsen: Thank you, Mr. Hall. And that second amended petition is Board's Exhibit 1-Y in evidence:

The term "full time newsboy" means (1) an individual who sells to the general public the Five, Six, Eight, Nine and Ten Star, or the Six, Eight, Nine and Ten Star editions of the News five or more days a week; and (2) an individual who sells the Four Star edition, or previous editions, of the News for a minimum of four hours per day between the hours of 4:00 a. m. and 10:00 a. m. five or more days a week and does not include check men, bootjackers, temporary, casual or part time newsboys as herein defined;

(3) The term "bootjacker" is an individual who purchases newspapers for sale other than at an established corner, or other established place of sale;

(4) The term "part time newsboy" means (a) an individual who sells to the general public fewer than the Six, Eight, Nine and Ten Star editions per day, and (b) an individual who sells the Four Star edition of the News less than four hours per day, and does not include check men, full time newsboys, bootjackers, temporary or casual newsboys as herein defined;

(5) The term "check man" shall be deemed to be synonymous with the term "wholesalers" and shall be deemed to be covered by the evidence in this proceeding to date;

(6) The terms "temporary newsboy" and "casual newsboys" shall be deemed to have their ordinary and common significance. [1060]

It is further stipulated that this stipulation is intended to be merely for the purpose of defining terms and is not intended to be a recognition by Stockholders Publishing Company, Inc., that the classes of individuals defined herein, or any of them, constitute proper bargaining units or any unit.

Mr. L. B. Binford: Do I understand, Mr. Mouritsen, that you are offering that as a stipulation?

Mr. Mouritsen: Yes. That is offered as a stipulation.

Mr. L. B. Binford: The stipulation is accepted by the Stockholders Publishing Company.

Mr. Comorre: By the Newsboys Union.

Mr. Cosgrove: The stipulation has no application to the Times-Mirror case, has it, Mr. Mouritsen?

Mr. Mouritsen: It has no application.

Mr. Hall: You stipulate, do you, Mr. Mouritsen, that the stipulation just read into the record by yourself and acceded to by Mr. Binford has no application to the Los Angeles Examiner?

Mr. Mouritsen: That may be so stipulated.

Mr. Compton: And the same is true as to the Los Angeles Evening Herald and Express, Mr. Mouritsen?

Mr. Mouritsen: Yes, that may be so stipulated.

Mr. L. B. Binford: At a hearing of this meeting on the 14th day of June, 1940, at the morning

session, Mr. Patrick [1061] Comorre was called to the stand by the Board, and his testimony is reported commencing at page 583, line 5, and continuing to and including page 590 of the transcript. On page 590 the following appears:

"Mr. Cosgrove: May we have a stipulation to the effect that the testimony given by the witness Comorre since he was recalled to the stand yesterday afternoon late, and including his testimony this morning, is not intended to apply to the Los Angeles Times?

"Mr. Mouritsen: It may be so stipulated, and also with reference to the Examiner.

"Mr. L. B. Binford: And the Herald and Express—I mean the News?

"Mr. Mouritsen: Yes."

Mr. Binford now relieves the Board from that stipulation in so far as the Stockholders Publishing Company is concerned, with the understanding, nevertheless, that no stipulations made between counsel in that portion of the record to which Stockholders Publishing Company was not a part shall be deemed to be binding upon Stockholders Publishing Company.

Mr. Mouritsen: And may I state that the purpose of my request to be relieved of that stipulation was merely that that evidence which permitted to the appropriate unit claimed would not have to be repeated with reference to the News. [1062]

Mr. L. B. Binford: We wish to offer the following stipulation to counsel for the Board and to Mr. Comorre:

In answering—this is explanatory of the stipulation—in answering the questions of the Board's attorney yesterday morning, Mr. Dutton O'Brien, Circulation Manager of the News, overlooked one point which was brought to his attention first by the testimony of one of the Board's witnesses, and later in a conversation during one of the recesses yesterday afternoon, and we offer a stipulation that, if recalled, Mr. O'Brien would testify as follows:

That when he stated in response to a question of Mr. Mouritsen, appearing at page 965, line 2, of the transcript, which question is as follows: "Q. Now, Mr. O'Brien, will you explain how the first four editions of the News are circulated so far as street sales are concerned, and also confine that, please, to circulation within the City of Los Angeles," he answered "A. The only edition of the first four which reaches the city streets is the fourth edition, the Four Star."

Mr. O'Brien should have added thereto the following [1063] exception, and he would so testify if called: Lew Law, a morning district man, as a voluntary practice, obtains 175 copies of the One Star edition of the News for a newsboy who sells at Fifth and Wall; 65 copies of the One Star edition and 70 copies of the Three Star edition for a newsboy who sells at 7th and Broadway; and 175 copies of the Three Star edition for a newsboy who sells at 7th and Central. The newsboys call at the office for these copies, except the 70 copies of the Three Star edition for the newsboy at 7th and Broadway. They are delivered by a News truck. All copies, how-

ever, are charged to the account of Mr. Lew Law, who in turn makes his collections from the newsboys. At the request of the district men, 50 copies of the Two Star edition are sent to a newsboy at the corner of 41st and Central, and 10 copies of the Three Star edition are sent to a newsboy at the corner of Sunset and Vine. In these cases also the papers are charged to the district men who make their collections from the newsboys. Except for these cases, the three district men involved, as well as all other morning district men, receive only the Four Star edition.

Will it be stipulated, Mr. Mouritsen and Mr. Comorre, that if Mr. Dutton O'Brien were recalled to the stand he would modify his answer to the question quoted above by adding that portion I have just dictated into the record?

Mr. Mouritsen: It may be so stipulated. [1064]

Mr. Comorre: It may be so stipulated by the Union. [1065]

Mr. Mouritsen: I offer as Board's Exhibit No. 10 an agreed statement of facts relative to the operation of the Stockholders Publishing Company, Inc., in so far as it bears upon the Board's jurisdiction over the operations of that Company.

Trial Examiner Kennedy: Is there any objection? [1066]

Mr. L. B. Binford: That stipulation has been entered into by us.

Trial Examiner Kennedy: Received in evidence.

(Thereupon, the document above referred to

was received in evidence and marked as Board's Exhibit No. 10.)

Mr. Cosgrove: It has no application to the Los Angeles Times case, has it; Mr. Mouritsen?

Mr. Mouritsen: No. That may be so stipulated.

Mr. Hall: And the same stipulation may be made with respect to the Los Angeles Examiner?

Mr. Mouritsen: So stipulated.

Mr. Compton: The same stipulation may be made with reference to the Los Angeles Evening Herald and Express?

Mr. Mouritsen: So stipulated. [1067]

GEORGE E. HUTCHINSON

called as a witness by and on behalf of the Evening Herald and Express, one of the Respondents, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Compton): What is your address, Mr. Hutchinson? A. 1279 Third Avenue.

Q. What is your occupation?

A. District manager of the Herald and Express.

Q. What district are you district manager in?

A. The district running from Grand Avenue to Western, and from Pico to Adams.

Q. Is there a vendor selling papers in that district by the name of Apice—James V. Apice?

(Testimony of George E. Hutchinson.)

A. There is. [1070]

Q. (By Mr. Compton): Mr. Hutchinson, on Tuesday, June 18, 1940, Mr. Apice testified concerning an alleged removal of himself from his corner. His testimony in that respect is reported in the reporter's transcript of testimony and proceedings, Volume 8, beginning at Page 1023, line 4. Do you remember at any time any incident in respect to the removal of Mr. Apice? A. I do.

Q. And was he removed?

A. Temporarily.

Q. Did you remove him? A. Yes, I did.

Q. Will you please relate the circumstances thereof?

A. I came into the office there one day and found that there had been a report brought in there that he had made improper advances and attempted to molest a juvenile of the opposite sex. The person who had brought in the report and who threatened practically to take the law in his own hands was the girl's father. He said there was considerable feeling in that particular—around that particular neighborhood and corner over it, and there was likely to be some trouble over it; that he wanted to handle it legally. And just about that time, we had had the rape and murder of these two little [1071] girls in Inglewood, and the city was more or less stirred up along those lines. Therefore I went out to the corner and I told Jimmy that he had best be taken off for the time being until we found out

(Testimony of George E. Hutchinson.)

what it was all about; that naturally we didn't want him to wholesale our papers or to sell our papers if he was guilty of such a thing, and that for his own self protection, it would be very poor policy for him to even hang around the corner for a few days.

Q. Did you investigate the story?

A. I did.

Q. And you were not able to find anything that substantiated it?

A. Not anything that substantiated it.

Q. As soon as you made that investigation, did you tell Mr. Apice to go back on his corner?

A. I did.

Q. Has he been there ever since?

A. He has been there ever since.

Q. And he is a very satisfactory salesman, is he?

A. He is, very; yes, sir. [1072]

Q. (By Mr. Compton) Are you a member of any newspaper organization?

A. Well, sir, I am with the Newspaper Guild.

Q. That is affiliated with the C. I. O.?

A. Yes, sir.

Mr. Cosgrove: May it be stipulated that the testimony of the witness George E. Hutchinson has no application to the Los Angeles Times case?

Mr. Mouritsen: It will be so stipulated.

Mr. Hall: Will the same stipulation be made with reference to the Los Angeles Examiner?

Mr. Mouritsen: It may be so stipulated. [1073]

PATRICK COMORRE

recalled to the stand by and on behalf of the National Labor Relations Board, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Mr. Comorre, with reference to the newsboys who handle the News, the Four Star edition of the News, have you made an investigation or have you had an investigation made respecting their work, their hours and the nature of their operations?

A. I have. [1074]

Q. And who assisted you in the investigation?

A. Well, Mr. Eley and Mr. Louie Schwartz.

Q. And did you ascertain anything with reference to the number of newsboys who handle the News in the morning? A. I have.

Q. I will ask you if you have ascertained anything with reference to the full-time newsboys who handle the News in the morning?

A. I have.

Q. Will you please state what the approximate number of such full-time newsboys in the morning is?

A. Well, about 114, 110 or something in there—about 114, I should say, something like that; that is, that sell the News. [1075]

Mr. Cosgrove: Will it be stipulated, Mr. Mouritsen, that the testimony given this morning by Mr.

Patrick Comorre is not applicable to the Los Angeles Times' case?

Mr. Mouritsen: It may be so stipulated.

Mr. Hall: Will the same stipulation be made with reference to the Los Angeles Examiner?

Mr. Mouritsen: It may be so stipulated.

Mr. Compton: And the same stipulation with reference to the Los Angeles Evening Herald and Express, Mr. Mouritsen?

Mr. Mouritsen: It may be so stipulated. [1077]

Trial Examiner Kennedy: You will be ready to go ahead with the Times' case after recess; is that right? You have your witnesses?

Mr. Mouritsen: Yes. [1079]

Mr. Mouritsen: Doctor Cosgrove, have you been able to compile a list of names of the newsboys which I asked for some time ago?

Mr. Cosgrove: Following your request, we took the matter up with the administrative heads of the Times-Mirror Company and were advised that they had no list anywhere and never had any lists of hustlers or newsboys, and at our direction they then called in all of their district men and advised the district men to make a list and ascertain the name of every newsboy in their district; that that was done, and we have arranged them in alphabetical order, and we will have a list here within the next day prepared for that purpose pursuant to your request, which shows the name of every hustler according to the district where he sells papers, and shows the corner—that is, the intersection—where

he sells papers and also shows which of these newspaper boys are what you have been calling check men. The list shows that the [1080] Times has one newspaper boy who receives the check. He receives the check for coming to the Los Angeles Times Building about 1:00 o'clock in the morning and staying there until about 4:00 o'clock, during which time he counts newspapers that have been returned; and for that he is paid. Using the term that has been used by the Board, we classify him as a check man. He is the only man who sells newspapers that receives a check. That list will be ready, I think, perhaps late today or, I am sure, the first thing in the morning.

Mr. Mouritsen: Thank you very kindly, Doctor. Mr. Marx, please.

RAYMOND F. MARX

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Where do you reside, Mr. Marx? A. 1616 Angelus Avenue.

Q. In the City of Los Angeles?

A. Los Angeles.

Q. What is your business or occupation?

A. Circulation Manager of the Los Angeles Times.

(Testimony of Raymond F. Marx.)

Q. How long have you held that position?

A. Since July, 1934. [1081]

Q. In your position as circulation manager, are you acquainted with the operations so far as circulation is concerned of the Times-Mirror Company?

A. Yes.

Q. Will you please state whether or not the Times-Mirror Company is engaged in the business of circulating copies of the Times that it publishes?

A. If the Times Publishing Company is, you say?

Q. Engaged in circulating the copies of the Los Angeles Times which it publishes? A. Yes.

Q. And by what means does it engage in the circulation of the copies of the Los Angeles Times?

A. Well, we have what is known as the home delivery organization, and the street sale organization.

Q. And the street sale organization is part of the circulation system of the Times-Mirror Company; is that correct? A. Yes, sir. [1082]

Q. The street sales, copies of newspapers, are circulated through newsboys; is that correct?

A. Yes, sir.

Trial Examiner Kennedy: Does the petition intend to include this home delivery service?

Mr. Mouritsen: No, Mr. Examiner. It has to do only with newsboys.

Q. And, Mr. Marx, the home delivery department you mentioned does not circulate papers through newsboys; is that correct?

(Testimony of Raymond F. Marx.)

A. No, sir.

Q. Will you explain the set-up of the organization whereby you circulate your papers through streets sales?

A. The street sale organization is under the supervision of Mr. Jerry Cohen, who in turn supervises the sales of the salesmen.

Q. And how is the street circulation conducted within the cities of Los Angeles and Glendale, California?

A. In Glendale, California, they are circulated there in the same manner.

Q. As they are in the City of Los Angeles?

A. Yes, sir.

Q. Now, Mr. Marx, would you explain your street sales set-up with more particularity, directing your attention to the night—what might be termed the night men and the morning [1083] men?

A. The night men are the organization selling newspapers at night, and the morning men sell in the morning.

Q. And can you state approximately the relationship between your night organization and the morning organization with reference to the numbers or the amounts of the street sales at night, and the number in the morning?

A. You mean the number of sales?

Q. Yes.

A. Well, I would say that they were far greater at night than they were in the morning.

(Testimony of Raymond F. Marx.)

Q. Well, can you give us some idea of the approximate relationship between night and morning?

A. Probably ten to one. [1084]

Cross Examination

Q. (By Mr. Cosgrove): Mr. Marx, do you know whether or not the Los Angeles Times up to say thirty days ago had in its records a list of newsboys that purchased and sold the Los Angeles Times?

A. Prior to thirty days ago?

Q. Yes.

A. No, I do not think we had any list.

Q. Now, do you know whether we, that is, counsel for the Los Angeles Times, took up with you and Mr. Nathan the matter of having a list made?

A. Yes, sir.

Q. And about when was that?

A. I would say around the end of May. [1085]

Q. Of this year? A. Yes, sir.

Q. Now, was it the wish, the expressed wish of your attorneys that such a list be prepared?

A. Yes.

Q. And did the organization agree to prepare it?

A. They did.

Q. And did they undertake to prepare it?

A. Yes, sir.

Q. And under whose direction?

A. Under Mr. Jerry Cohen's direction.

Q. And what was the method employed?

A. I believe district managers obtained the

(Testimony of Raymond F. Marx.)

names of all hustlers and the corners on which they sold.

Q. And those in turn were turned over to you or turned over to the attorneys, or what became of the list?

A. They were turned over to our attorneys. [1086]

JULIUS J. COHEN

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Where do you live?

A. 3512 Crestmont Avenue, Los Angeles.

Q. What is your business or occupation?

A. I am supervisor of street sales for the Los Angeles Times.

Q. How long have you held that position?

A. Since July, 1934.

Q. And what, briefly, are your duties in that position?

A. The delivery and promotion of sales—delivery of newspapers and promotion of sales.

Q. In what area?

A. At night—do you want the specified towns? [1090]

Q. Yes, would you so specify?

(Testimony of Julius J. Cohen.)

A. City of Los Angeles proper, Glendale, Burbank, Belvedere, South Pasadena, Beverly Hills, Westwood, Huntington Park. I think that's about all.

And do you want the morning, too?

Q. Yes. You can tell me the morning.

A. The morning boundaries are the so-called downtown district, bounded on the north by Temple Street, on the south by Pico, on the east by Central Avenue, on the west by Figueroa.

Q. Now, to assist you in your duties, do you have an organization at night? A. Yes, sir.

Q. Will you explain, please, what that organization is?

A. My night street sales organization is divided into twelve districts; these twelve districts are run, naturally, by twelve district men and six relief district men.

Q. And in what area do they operate, those twelve district men?

A. The area I mentioned as night street sales.

Q. And what do you call them—what is the term for those? A. District men.

Q. Are they night district men?

A. Night district men, yes.

Q. And how do you operate in the—do you have an organization to assist you in the morning?

[1091]

A. Yes, sir.

Q. Would you please tell us the extent and nature of that organization?

(Testimony of Julius J. Cohen.)

A. I have three morning district men.

Q. And are those the only two organizations under your supervision that have anything to do with street sales through newsboys in the cities of Los Angeles and Glendale, California?

A. Yes, sir.

Q. Will you tell us how and—well, these night district men and the morning district men are employees of the Times-Mirror Company, are they not? A. Yes, sir.

Q. Will you tell us how the night district men operate, giving the names of the editions that they handle and the approximate hour when they appear?

A. The hour of appearance is usually governed by press run.

Q. I see.

And what is that hour, generally?

A. On our daily the press starts at 6:00 P. M. Saturday for our street sales the press starts at 2:30 P. M. Sunday afternoon at the present time the press starts at 3:15 P. M.

Q. Will you explain what one of these night district men does on a normal weekday with reference to his distribution to newsboys? [1092]

A. Well, he comes down about 5:30, finds out what the headline will be, and if it is just an ordinary headline he knows just about what they sell on the district, so he will just leave his order alone. If it is an exceptionally good headline, he

(Testimony of Julius J. Cohen.)

will sometimes increase his order; sometimes double it—I have seen cases where they have trebled it; and if it is just a little bit better than the ordinary he might put on 150 papers on each district.

Q. What does he do after he obtains his papers?

A. After he obtains his papers, he takes them out to the various corners and gives them to the newsboys. There might be some newsboys come down for a free ride, that come along with him. Some newsboys are on the corner.

Q. After making that official coverage of his district, does he return to the plant?

A. He usually goes and eats. That takes about a half an hour, or 45 minutes, and he usually eats on his district, and on the way back to the plant he re-covers, to try and get an idea of how many he will need on the next edition that comes out at 9:00 o'clock. Ordinarily that is on week days.

Q. Describe what he does as a general rule after that time?

A. He gets his papers on our Three Star edition at 9:00 P. M., puts them out to all the newsboys, and he comes back, gets another edition called the "R" edition, at 11:30 P. M., puts those out, and on the way putting those out he checks in [1093] various corners, and then he stays out to the end of his district until about 1:00 o'clock, then he comes in and collects off the rest of the hustlers, and brings in what hustlers want to come in; and he checks in to the office at 1:30 and is out of there about 2:00 P. M. [1094]

(Testimony of Julius J. Cohen.)

Q. And the price of the Saturday paper is 10 cents a copy to the public, is that correct?

A. That is correct.

Mr. Cosgrove: Pardon the interruption.

By Saturday paper, you mean the Sunday paper that is put on the streets Saturday evening?

Mr. Mouritsen: Yes. Did you so understand it, Mr. Cohen?

The Witness: Yes, sir.

Q. (By Mr. Mouritsen): And the price of the regular weekday edition to the public is what?

A. Five cents.

Q. And what is the price of the regular weekly paper to the newsboys? A. At night?

A. At night. A. 1½ cents.

Q. What is the price of the Sunday editions issued on Saturday to the newsboys?

A. 6 cents.

Q. That is done throughout the area of Los Angeles and Glendale, California?

A. Yes, sir. [1095]

Q. The night district men operate, as a rule, between what hours? A. Daily?

Q. Daily, yes.

A. Between the hours of 6:00 P. M. to 2:00 A. M.

Q. And Saturday?

A. Between 2:30 P. M. and 2:30 A. M.

Q. And Sunday?

A. Between 3:00 P. M. and 2:00 P. M.—2:00 A. M., rather.

(Testimony of Julius J. Cohen.)

Q. And in between what hours—in general during what hours of the day do your morning district men operate?

A. 12:30 A. M. to 10:00 A. M.

Q. Will you please describe how a morning district man operates on a week day?

A. There are three distributing corners. One is Second and Spring, another one is Sixth and Main, and another one is Seventh and Grand. The morning district man comes down to the concourse or loading platform and gets part of his papers and goes to these corners. Newsboys are congregated at these corners, and he gets a few papers and goes to his corner, and [1097] then the district man goes back to the loading platform for our 6:30 edition, or 9:00 A. M. edition, and then he distributes them to these corners.

Q. Now, with reference to street sales and these morning district men, is there any change in their manner of operation on Saturdays or Sundays?

A. There might be a little change on Sundays. I think instead of Second and Spring, it is Second and Broadway on Sundays on one district, and instead of Seventh and Grand most of the papers are picked up at Sixth and Main Sunday morning.

Q. Now, these newsboys who receive papers at these various central points you have mentioned, where do they check in?

A. Some of them check in on that corner, and some come down to these various central points and check in.

(Testimony of Julius J. Cohen.)

Q. Now, do you have any other men assisting you in the circulation, so far as street sales are concerned?

A. Well, I have a man by the name of Stephen De Simoni who takes care of the office when I go out.

Mr. Cosgrove: I wonder if we might have the gentleman's name again?

The Witness: S-t-e-p-h-e-n D-e S-i-m-o-n-i.

Q. (By Mr. Mouritsen): And at what price are the newspapers furnished to the newsboys who receive papers from the morning district men? [1098]

A. Three cents.

Q. And at what price are they sold to the public? A. Five cents.

Q. That is the general practice among all morning men? A. Yes, sir.

Q. Now, from time to time during the period while you have been——

Mr. Cosgrove (Interrupting): Supervisor of street sales.

Q. (By Mr. Mouritsen) ——supervisor of street sales, Mr. Cohen, have you put newsboys on these various corners?

A. They have come in and asked for corners, and I have asked the district men if they ever have any corners open, if that is what you mean.

Q. And from time to time during the period that you have held the position that you now occupy, have you taken up various grievances with the newsboys? A. Yes, sir.

(Testimony of Julius J. Cohen.)

Q. Will you state what the nature of those grievances has been, just in general?

A. Well, there has been so many—if you will refresh my memory, I can remember.

Q. Well, that they have been taken off corners and come to you to obtain them back?

A. Well, there has been cases where newsboys drank a little too much, hasn't had enough money left to pay a district man for his papers, and naturally the district man don't want to do any business with him and they have come in to me and I [1099] have told the district man to give them another chance, if that is what you mean.

Q. Well, what are some of the other complaints that have been taken up with you individually by newsboys? You are acquainted with that better than I.

A. There has been a lot of them. I don't know. If you have got any cases and can refresh my memory, I might remember them.

Q. Well, any with reference to the price at which they received the papers?

A. Yes, sir.

Q. In reference to the fact that they weren't able to obtain sufficient copies of the paper?

A. Yes, sir.

Q. Or that they had been given too many copies of the paper? A. No, sir.

Q. With reference to the fact that they had been put off their corners for being off of them for too

(Testimony of Julius J. Cohen.)

long a period?

A. I don't remember any case like that.

Q. Or about any arrangement regarding their relief man? A. Yes, sir.

Q. That they desired to put a particular relief man on the place and couldn't do so?

A. I think we had one case like that.

Q. Or that they had been injured while selling the Times [1100] and wanted some help from you? A. Yes, sir.

Q. Now, on approximately how many occasions, Mr. Cohen, would you estimate that newsboys individually have taken up complaints with you during the last three years?

A. Well, I get an average of about four or five a week.

Trial Examiner Kennedy: You mean by that question the Newsboys Union, or the individuals?

Mr. Mouritsen: No, individuals.

Q. Did you so understand the question, Mr. Cohen? A. Yes.

Q. Now, Mr. Cohen——

A. (Interrupting): Pardon me.

May I add to that: Most of those complaints are newsboys that come and they want to know why they can't get a spot.

Q. Well, in addition to these individual complaints, have you from time to time met with representatives of the Newsboys Union?

A. Once.

(Testimony of Julius J. Cohen.)

Q. And with whom representing the Newsboys Union?

A. If I remember right, I think there was Pat Comorre, Art Page, Jimmy Deutsch. I think there was one more party present but I don't remember his name.

Q. And with reference to what particular matter did they [1101] confer with you?

A. Well, most of it was in regard to raise in rate to the newsboy.

Q. When did the raise in rate to the newsboys occur?

A. It was February 9, 1939, on the daily, and February 26, 1939, on the Sunday paper.

Q. Oh, was this the conference at which Mr. Marx and Mr. Adams were also present?

A. Yes, sir.

Q. Now, Mr. Cohen——

A. (Interrupting): Those dates are correct.

Q. (Continuing): ——does the Los Angeles Times from time to time furnish newsboys selling papers, paper racks?

A. Only when the newsboy requests it.

Q. But when the request is made, the Times furnishes them certain racks; is that correct?

[1102]

A. I have given them racks, or I have told them to pick out a rack.

Q. And those are furnished by the Times; is that correct? A. Yes; oh, yes.

(Testimony of Julius J. Cohen.)

Mr. Mouritsen: May this be marked for identification Board's Exhibit next in order?

(Thereupon, the document above referred to was marked as Board's Exhibit No. 12 for identification.)

Q. (By Mr. Mouritsen): Mr. Cohen, I will ask you if Board's Exhibit 12 for identification is a correct picturization of racks furnished by the Times to newsboys?

Mr. Mouritsen: Pardon me, Mr. Cosgrove.

Mr. Cosgrove: I have seen it. Thank you very much.

The Witness: This rack is furnished to the news stand delivery man, Mr. Mouritsen; it is not furnished to the newsboys. A newsboy probably uses it. It is on the corner.

Q. (By Mr. Mouritsen): Who puts it on the corner? A. The news stand delivery man.

Q. That is a Times' employee, isn't it?

A. Yes, sir.

Mr. Mouritsen: I will offer that as Board's Exhibit Number 12. [1103].

Trial Examiner Kennedy: Received.

(Thereupon, the document above referred to was received in evidence and marked as Board's Exhibit No. 12.)

NATIONAL LABOR RELATIONS BOARD

XXI-R-

CASE NO. 927, etc.

EXHIBIT NO. 12

Stockholders Publishing Co.

6-19-40

Cohen

OFFICIAL REPORTER

Frazier

(Testimony of Julius J. Cohen.)

Mr. Mouritsen: May this document be marked Board's Exhibit next in order?

(Thereupon, the document above referred to was marked as Board's Exhibit No. 13 for identification.)

Mr. Mouritsen: I believe you have seen this also, Mr. Cosgrove?

Mr. Cosgrove: Yes. Thank you kindly.

Q. (By Mr. Mouritsen): Mr. Cohen, from time to time during the period you have occupied the position you now hold with the Times, have you furnished to the newsboys change aprons?

A. Yes, sir.

Q. That is, for use in their operations of selling Times; is that correct? A. Yes, sir.

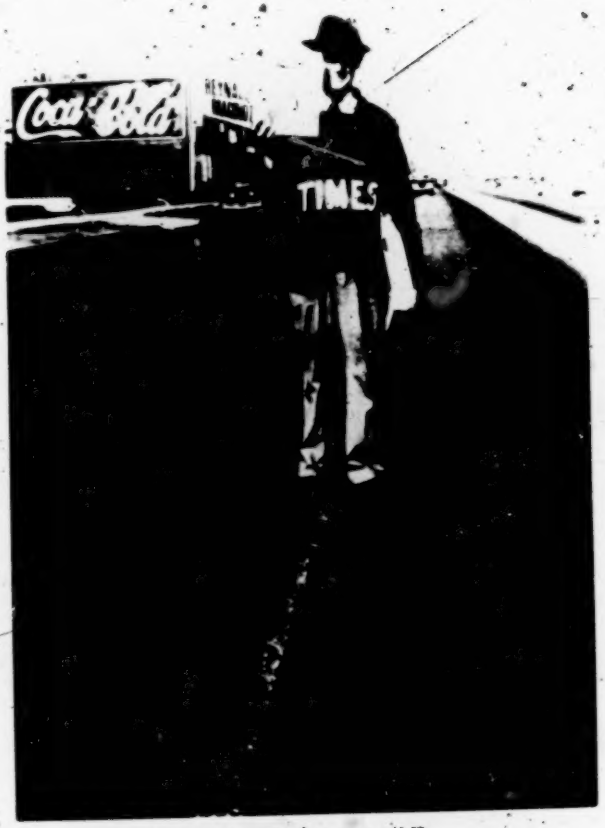
Q. I show you a document marked Board's Exhibit 13 for identification, and ask you if that is a correct picturization of the change aprons furnished to the newsboys? A. Yes, sir.

Mr. Mouritsen: I will offer that, Mr. Examiner, as Board's Exhibit No. 13.

Mr. Cosgrove: No objection.

Trial Examiner Kennedy: Received. [1104]

(Thereupon, the document above referred to was received in evidence and marked as Board's Exhibit No. 13.)



NATIONAL LABOR RELATIONS BOARD

XXI-R-

CASE NO. 927, etc.

EXHIBIT NO. 13

Stockholders Publishing Co.

Cohen

DATE 6-19-40

DANIEL W. [illegible]

Frazier

(Testimony of Julius J. Cohen.)

Trial Examiner Kennedy: We will be in recess until 1:45. Be back here at that time, Mr. Witness.

(Thereupon, at 12:05 p. m., a recess was taken until 1:45 o'clock p. m. of the same date.) [1105]

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:45 o'clock p. m.)

Trial Examiner Kennedy: The hearing will be in session. We had a witness on the stand, I believe.

JULIUS J. COHEN

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and further testified as follows:

Direct Examination

(Continued)

Mr. Mouritsen: Mr. Reporter, do you have the last few questions and answers?

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Mouritsen): Mr. Cohen, I believe you testified this morning that the morning papers are furnished to the newsboys at 3 cents a copy; is that correct? A. Yes, sir.

(Testimony of Julius J. Cohen.)

Q. Is that 3 or 3½ cents a copy?

A. 3 cents.

Q. Now, with reference to these night district men, I believe you said that there were 12 of them?

A. There is 12 districts, but there is about 20 district men.

Q. Can you tell us briefly what area those 12 districts [1106] involve?

A. Well, as I stated before, it is Los Angeles proper, Glendale, Burbank, Beverly Hills, Westwood, Huntington Park, Belvedere, and South Pasadena. I think that is all.

Q. Now, under your supervision do you have certain employees whose duty it is to transport newsboys from the concourse or loading platform to their spots?

A. By that do you mean the district men or the machines we hire to take out excess——

Q. Will you explain what district men do in that regard?

A. They take out the papers, and whichever newsboys come down to the concourse for a free ride.

Q. Now what, if any, machines do you hire for that purpose?

A. We have about 12 machines that we hire. We pay from 75 cents a night and up for gasoline money. Newsboys own those machines.

Q. And their only purpose is to transport newsboys to their spots from the Times loading platform or concourse?

(Testimony of Julius J. Cohen.)

A. That is right; and their newspapers, of course.

Q. And how many such employees are there under your supervision?

A. They are not employees, if you mean by being on the payroll.

Q. I see. Well, how many are there? [1107]

A. 12.

Q. And do you know approximately how many newsboys they transport to their spots, as a general rule?

A. Oh, an average of four or five including themselves. I will say above five including themselves, or six.

Q. That will be on a general average about 60 these men would transport, including themselves?

A. That is right.

Mr. Mouritsen: I think that is all.

Cross Examination

Q. (By Mr. Yoakum): You stated that the night area consisted of Los Angeles, Glendale, Burbank, Belvedere, South Pasadena, Beverly Hills, Westwood and Huntington Park. Does it include Alhambra?

A. No, sir. That is not under my supervision.

Q. With reference to the racks that you mentioned in your testimony of this morning, are those racks furnished to hustlers?

A. On their request, if we have them.

Q. Do you have them at present?

(Testimony of Julius J. Cohen.)

A. No.

Q. How long has it been since you have had any of these racks?

A. I think it has been about six weeks or two months. Usually when the news dealers' racks break up and we have [1108] a few that have to be repaired, they bring them down to the concourse and a newsboy might see a rack and he will say, "Can I take one to my corner?" and we say, "Go ahead and take one."

Q. You said when the news dealers' racks break up. Are these racks for news dealers or for hustlers?

A. Yes, they are for news dealers.

Q. What do you mean by a news dealer?

A. A drug store, cigar stand, confectionery store, any man that runs—that wants to use newspapers as a sideline on his property line.

Q. And it was to service the persons of that classification that the racks were originally acquired by the paper? A. Yes, sir.

Q. Was there any requirement that the hustlers use these racks? A. No, sir.

Q. How does a hustler acquire a change apron?

A. Well, I have got about 25 or 30 hustlers now that have come in, in the last month or so, and asked me for change aprons; but usually I order about 500 or 1000 aprons. When I get them in, I divide them up amongst the district men and they give them to their hustlers.

(Testimony of Julius J. Cohen.)

Q. Do you know whether the district men tell the hustlers to use the aprons? [1109]

Mr. Mouritsen: I object to that as calling for hearsay; something beyond his knowledge.

Trial Examiner Kennedy: I couldn't hear you.

Mr. Mouritsen: I object to that as calling for hearsay; something beyond this witness' knowledge.

Trial Examiner Kennedy: Sustained.

Mr. Yoakum: I asked him if he knew whether the——

Trial Examiner Kennedy: Well, you may answer that yes or no.

The Witness: No.

Mr. Yoakum: Will you read that question, please?

(The question referred to was read by the reporter, as set forth above.)

Q. (By Mr. Yoakum): You mean by your answer that you do not know whether they tell them to use the aprons? A. I do not know.

Q. You do not know. Is there any requirement by the management that the hustler use an apron?

A. No, sir.

Q. Do all hustlers use the aprons?

A. No, sir.

Q. What hustlers use the aprons?

A. Those that want to, to save their clothes. There are some hustlers like to slough off a paper once in a while and they don't want to wear an apron; they don't want to designate [1110] themselves as

(Testimony of Julius J. Cohen.)

a Times newsboy. I have seen some hustlers cut the word "Times" off the apron and just use the change pockets.

Mr. Mouritsen: I move to strike that out as a voluntary statement.

Trial Examiner Kennedy: It may remain.

Mr. Yoakum: Did the Examiner say that might remain?

Trial Examiner Kennedy: Yes, it may remain in.

Q. (By Mr. Yoakum): In your enumeration of what Mr. Mouritsen has designated as beefs or grievances, you stated the newsboys would inquire of you why they could not get a spot?

A. Yes, sir.

Q. What did you mean by that term, "can't get a spot"?

A. Well, there is usually from 20 to 25 extra newsboys around the concourse where all these newsboys congregate and they stick around from 5:00 or 6:00 o'clock and some newsboy does not show up—usually they will know about it or they will come up to a district man and ask him for the spot and he will say, "Well, we have got so-and-so open; it sells about 25 or 30. Do you want to try it?" And he will take it. But in the meantime, everybody sticks to their corners, especially during good war news they don't want to take any days off, so there is no spots open.

Q. Will you state for the record, if you please, what you [1111] mean by the term "concourse"?

(Testimony of Julius J. Cohen.)

A. That is the ramp where all the trucks are and where the newspapers come down from the mail room.

Q. That is located in the Times Building at First and Spring?

A. Yes, sir; on the Spring Street side.

Q. That is where many, or perhaps all of the night district men receive their papers?

A. All of them.

Q. Do you know whether your night street sales are circulated in the areas which you have heretofore enumerated in the same fashion as they are distributed in the city of Los Angeles and Glendale?

A. I don't understand the question.

Q. If you do not understand, I will try to clarify it.

Were you in the court room this morning when Mr. Marx, circulation manager, testified?

A. Yes, sir.

Q. Do you recall he testified that the street circulation in the city of Los Angeles was the same as the method employed in the city of Glendale?

A. Yes, sir.

Q. I ask you if the same method is employed with reference to the night street circulation in the city of Beverly Hills. [1112]

A. Yes, sir.

Q. Is that the same method employed in Burbank? A. Yes, sir.

Q. In Belvedere? A. Yes, sir.

(Testimony of Julius J. Cohen.)

Q. In South Pasadena? A. Yes, sir.

Q. In Westwood? A. Yes, sir.

Q. In Huntington Park? A. Yes, sir.

Q. You mentioned in this morning's testimony that a hustler on one occasion had complained to you that he was not allowed to select his relief men. Do you recall that testimony? A. Yes, sir.

Q. Can you recall the approximate time when that complaint was made?

A. I am not sure, but it seems to me it was about two or three months ago.

Q. Do you recall the name of the hustler?

A. This particular hustler's name was Eban Chelton.

Q. How is the first name spelled?

A. E-b-a-n. I think that is the way he spells it. Pardon me. I think I have his name here. Yes, that is correct.

Q. Did this discussion occur at the concourse? [1113]

A. No, it occured in the district man's—while I was on his corner.

Q. On Chelton's corner? A. Yes.

Q. Where was that?

A. Washington and Figueroa.

Q. Was anyone else present other than you and Eban Chelton?

A. No. There was Jack Shomaria.

Q. Who is he?

A. He is a Times district man.

Q. And that is all the persons present?

(Testimony of Julius J. Cohen.)

A. I think there was another—no, that is all the persons present.

Q. Now, you just state the discussion that took place at that time, telling us who said what.

A. Eban Chelton came up to the car and was telling Jack Shomaria that the relief man, a fellow by the name of Claude, had been hustling that night. This was Eban Chelton's night off and Claude had refused to sell one of Eban Chelton's customers a paper. I called Claude over and I asked Claude what was the trouble.

He says, "Well the customer didn't pay me the nickel; he usually paid Eban Chelton," and Eban Chelton in turn didn't give him the nickel, and that is what the controversy was. [1114]

And Eban Chelton said, "Well, I don't like him for relief man on the corner."

And so I says, "Have you got any better man"? He says, "I will get a man.".

I says, "Go ahead and get one if you can that will hold the corner up and do as well as you can," but he never did bring anybody around.

Q. He didn't mention any name of anybody that he wanted to have?

A. No. He said some Mexican kid—I don't know his name. [1115]

Mr. Hall: May it be stipulated, Mr. Mouritsen, that the testimony of Raymond F. Marx and Julius J. Cohen has no application to the Los Angeles Examiner case?

Mr. Mouritsen: That may be so stipulated.

Mr. Howard Binford: And as to the Stockholders case?

Mr. Mouritsen: That may be so stipulated.

Mr. Compton: And the Los Angeles Evening Herald and Express case? [1117]

Mr. Mouritsen: So stipulated.

JULIUS J. COHEN

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and further testified as follows:

Redirect Examination

Q. (By Mr. Mouritsen): Now, Mr. Cohen, in your description of these duties of these night district men, I believe you stated that they make their first coverage of the district and return to the plant at what time? A. About 8:30.

Q. Do they at that time return any copies of the first edition that they have taken around their district? A. No, sir.

Q. And I believe you stated that they place their orders for those papers when they first appear at the plant? A. Yes, sir. [1118]

Q. And that if it looks like a good news headline they take extras over their established order; is that right? A. Yes, sir.

Mr. Mouritsen: I think that is all.

THOMAS McKINNEY

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Mr. McKinney, where do you live?

A. 411 Kirby Street, Los Angeles.

Q. What is your position or occupation?

A. District Manager, Los Angeles Times.

Q. Are you what is known as a night district manager?

A. Night district manager, yes.

Q. How long have you held that job?

A. Oh, 12 years.

Q. In what area do you operate?

A. From Los Angeles to Glendale and Burbank.

Q. Will you tell us briefly what your duties as night district man consist of?

A. Well, distribute the papers to the boys, checking them in nights, and running back to the office, back and forth.

Q. Approximately during what hours do you operate on a [1119] week night?

A. Oh, we get down to the office around 6:15 or so, to about 1:00 o'clock.

Trial Examiner Kennedy: You are referring to the witness as district man or district manager?

The Witness: District manager?

Trial Examiner Kennedy: Manager?

(Testimony of Thomas McKinney.)

The Witness: Yes.

Trial Examiner Kennedy: That is the way you put your question.

Mr. Mouritsen: Yes. I do not know what the customary designation is. I think it is interchangeable.

Mr. Yoakum: It is interchangeable.

Mr. Mouritsen: Whether it is district manager or district man.

Mr. Cosgrove: I observed the terms seemed *to synonymous,* and I asked, out of the court room, these gentlemen about it, and some of them prefer the term district man and some district manager; their duties are precisely the same. One and the same term, if the Examiner please, so far as I can learn.

Q. (By Mr. Mouritsen): Mr. McKinney, do you carry as a general practice, a number of newsboys from the concourse to spots within your district? A. I carry a few, yes. [1120]

Trial Examiner Kennedy: I can't hear you, Mr. McKinney.

The Witness: I carry a few, yes.

Q. (By Mr. Mouritsen): And approximately how many newsboys handle the Times within your district? A. 18. [1121]

Mr. Cosgrove: While we are waiting, I might ask one question, if permitted.

These boys that you pick up at the concourse when the first edition comes out and take them out

(Testimony of Thomas McKinney.)

to the places where they sell the papers, do they live in the immediate neighborhood of the places where they sell their papers?

The Witness: No, sir. No, sir. [1122]

ROY ELEY

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Mr. Eley, have you ever sold the Los Angeles Times? A. I have.

Q. And when did you first start to sell that? [1128]

A. When did I first start to sell it?

Q. Yes.

A. Some time in January of 1939.

Q. And where did you start to sell?

A. Where did I start to sell?

Q. Yes.

A. If my recollection doesn't refuse me, it was at Fletcher and San Fernando in Los Angeles.

Q. And from whom did you obtain that spot?

A. Tom McKinney.

Q. Did you have a conversation with Mr. McKinney at or about the time you obtained the spot?

A. I did.

Q. Where did you have such a conversation?

(Testimony of Roy Eley.)

A. At the concourse of the Times Building.

Q. And was anyone else present?

A. I believe there was a fellow there we called—I can't recall his name right now, a personal friend of mine, too,—another friend of mine was there, yes.

Q. You don't recall his name?

A. I don't recall his name right at the minute. I will think of it in a minute.

Q. Was anyone else there?

A. That is all.

Q. Will you state what you said to McKinney and what [1129] McKinney said to you?

A. Well, I explained to this friend of mine—I spoke to this friend of mine first, I can't recall his name, and he referred me to Tom McKinney as his district man; so then I went to Tom McKinney and asked him if he could use me, and on the recommendation of this friend of mine he said that he could.

Q. And then what did you do?

A. Well, I asked him where. He told me I could work this man's off-spot at Fletcher and San Fernando.

Q. Did you have any further conversation with him at that time?

A. Well, I naturally asked him where the spot was and how to get there, and he told me that—Dick was the boy's name—that I would take a bus on Los Angeles Street and go out to the spot with

(Testimony of Roy Eley.)

Dick, and he gave me a dime to go out there, and that I would follow Dick's instructions when I got there.

Q. And did you proceed to the spot after that time? A. I did.

Q. At that time did you—when you reached the spot did you have a conversation with Dick?

A. Yes.

Q. And where did that take place?

A. At Fletcher and San Fernando.

Q. Was anyone else present? [1130]

A. Not that I know of.

Q. Will you state what Dick said to you and what you said to him?

A. Well, at the time we stepped off of the bus, right on what is known as the off-spot, he told me that that would be where I worked, that that would be the corner where I worked, and that we would have to go across to the filling station where Tom would bring the papers, and we would get the papers there.

So we went over there, and when Tom got there with the papers, he told me—he counted out a certain number of papers, I have forgot the exact number, and he told me that there was one of those that was not to be charged to me, that I should leave it at the drug store in the market, and at the same time I should go up to the liquor store just above there, where there was a certain sale, and over to the little restaurant where there was an-

(Testimony of Roy Eley.)

other certain sale, and then come back to the corner to cover that corner, to work through the market, and get out on the traffic line, in the traffic.

Q. Did you have any further conversation with him at that time?

A. Well, one of the things I think he told me that I was to work until 11:00 o'clock.

Q. Do you recall anything further that he said at that time? [1131]

A. Not that I recall right now, no, sir.

Q. And did you sell until 11:00 o'clock?

A. I did.

Q. And what did you do then?

A. Well, at 11:00 o'clock it is customary—that market closes at 10:15, and at 11:00 o'clock, why, I come across the street and checked in to Dick. In the meantime, I had received supplementary orders of papers, and I checked in to him, paying him for what papers I had sold, and he told me that Tom would be there shortly on his way in after the midnight, and that he would take me in to the car line.

Q. Did McKinney take you in to the car line at that time?

A. He took me in to the Sunset car line and——

Q. Now, after that time how would you proceed to your spot where you sold there the first night?

A. Well, I would come down to the concourse ordinarily, and I would wait until Mr. McKinney got there, and notify him that I was going out to the spot, and I would then go down on Los Angeles

(Testimony of Roy Eley.)

Street and catch the bus, and would proceed to the spot. If I was short of money, which was quite customary, why, maybe I would have to get a dime off of Tom to go out with, and if I didn't, I used my own money, and when I checked in, why, I was reimbursed for that ten cents.

Q. Now, after you started to sell on that spot did [1132] Mr. McKinney ever say anything additional to you regarding the area in which you were to sell?

A. The area in which I was to sell? No: Not that I recall—oh, not while I was on the off-spot.

Q. Well, how long did you continue on the off-spot.

A. Well, I was on the off-spot for—oh, I don't know: Six weeks, or two months, something like that. Until Dick left, and then I took over the main spot.

Q. And from whom did you obtain the main spot? A. From Tom McKinney.

Q. And was someone else put on the off-spot?

A. Yes.

Q. Did you have any conversation with Mr. McKinney regarding the man he was putting on the off-spot?

A. Well, any more than he told me he was—that he——

Q. Wait a minute. The question is, Did you have a conversation?

A. Oh, yes.

(Testimony of Roy Eley.)

Q. Now, about when did you have this conversation?

A. Well, when I reported to the alley, Tom told me, "Here's a man to cover your off-spot, and take him out there with you and tell him what to do—tell him about the spot."

Q. Well, that conversation took place at the alley about six weeks or two months after you started——

A. After I first started to work. [1133]

Q. Now, did you ever have a conversation with McKinney after that time with reference to the area in which you were to sell? A. Yes.

Q. Where did that conversation occur?

A. Well, now, I would not be certain whether that conversation occurred at the concourse or out on the spot, or possibly in the car on our way out. It was occasionally that I rode out with Tom.

Q. Well, how long after this—after you became the main spot boy did this subsequent conversation take place?

A. How long after? Well, if I recall, it was in June or July.

Q. Of what year? A. Of 1939.

Q. And at the time of the conversation was anyone else present?

A. Not that I know of.

Q. Will you state what he said to you and what you said to him?

A. Well, if I may use a prelude, at the time

(Testimony of Roy Eley.)

there was a drive-in stand under construction, and this was shortly after it had opened, and he told me——

Q. Wait a minute. Where was the drive-in stand with reference to the main spot on which you operated? [1134]

A. Well, at Fletcher and San Fernando. It was right on the corner that I operated.

Q. All right, now continue.

A. And he told me to watch that new drive-in and to work around there amongst those cars, and hustle in there as much as I could.

Q. Did you do that?

A. I did until I was ordered out by Van de Kamp's manager.

Q. Now, how long did you remain on the main spot at—Was it Fletcher and San Fernando?

A. Yes.

Q. How long did you remain on that spot?

A. Well, if I recall it right, it must have been the first time I was taken off of that spot was approximately in June.

Q. Well, was it before or after this conversation you had with McKinney? A. Before.

Q. Regarding the drive-in?

A. Yes, it was before. Before this conversation, I was——

Q. That you were taken off?

A. Yes. I was taken off. I was off for a while and was finally put back.

(Testimony of Roy Eley.)

Q. Then this conversation regarding the drive-in occurred after you had been taken off the spot, and then brought back? [1135]

A. Yes, that is right.

Q. Now, what occurred in June, 1939, with reference to your being taken off that spot?

A. Well, I believe the boy that was on the—what they call the main spot at Broadway and Brand in Glendale had been taken off of that——

Q. Wait a minute. I am not asing you for what you believe happened; I mean what happened so far as you and any district manager of the Times was concerned.

A. Well, Mr. McKinney told me that if I wanted, I could have the spot in Burbank—what they call the main spot, that is, at Broadway and Brand.

Mr. Yoakum: In Burbank?

The Witness: In Burbank—in Glendale.

Q. (By Mr. Mouritsen): And did he then put you on the spot? A. He did.

Q. And about how long did you continue to operate, or did you operate on the spot in Glendale?

A. Well, if I remember right, about two or three weeks, something like that.

Mr. Yoakum: Is this Broadway and Brand?

The Witness: Broadway and Brand in Glendale.

Q. (By Mr. Mouritsen): While you were on the spot in Glendale, did you have any boys to whom you gave papers? A. No. [1136]

(Testimony of Roy Eley.)

Q. Did you check anyone in?

A. I check in two practically regularly.

Q. I see.

Now, did you have any conversation with Mr. McKinney regarding your checking these men in?

A. Well, nothing more than that he told me that they would come down to check in to me.

Q. Well, about when did you have that——

A. When I first went on that spot.

Q. And after he talked to you about it, did you check them in? A. I did.

Q. And what did you do with the money you checked in?

A. Turned it over to Mr. McKinney.

Q. Did you also check in the unsold copies of the newspapers? A. I did.

Q. And what did you do with them?

A. I turned those back to Mr. McKinney.

Q. At the spot in Glendale were there any racks near that spot? A. One.

Q. And where was it with reference to——

A. On that corner.

Q. Did you ever have a conversation with Mr. McKinney [1137] regarding the rack?

A. Yes.

Q. And about when did that conversation occur?

A. When I first went there.

Q. Where did it take place?

A. Well, just where—whether it was in the concourse or whether in Glendale, I don't just recall.

(Testimony of Roy Eley.)

Q. Well, was anyone else present?

A. Not that I know of.

Q. Will you state what he said to you and what you said to him?

A. Well, the only thing I think he said to me was there was a rack there and I should see that I kept papers in it for display.

Q. And did you keep papers in it for display after that time? A. I did.

Q. During the time while you were on those two spots, did Mr. McKinney ever give you any advertising matter? A. He did.

Q. Did he give you any advertising placards?

A. He did.

Q. On how many different occasions?

A. Well, I couldn't say. I might say practically every Saturday. There was sometimes on Saturdays they wouldn't, [1138] but practically every Saturday.

Q. And did he ever say anything to you about those placards?

A. Yes. He told me to post them.

Q. And did you post them? A. I did.

Q. Did he ever give you any—did you ever have any conversation with him regarding any parts of the paper?

A. Regarding any parts of the paper?

Q. Regarding the rotogravure section of the paper.

A. Oh, one time in particular, I believe, yes.

(Testimony of Roy Eley.)

Q. About when did that occur?

A. Well, that was about the time that war was declared—I believe, the following Saturday. [1139]

Q. And what did Mr. McKinney say to you and what did you say to Mr. McKinney?

A. Well, at that time, on that edition they had a special map, a special war map of Europe in the rotogravure section, and we were given part of that section with this map and were told to tack it up on the post, or something like that, for display. [1140]

Q. Is that what Mr. McKinney said to you?

A. Yes.

Q. And after that time did you *take* that up on the pole? A. Yes.

Q. (By Mr. Mouritsen): Now, Mr. Eley, after you went back to selling on San Fernando and Fletcher, was the off-spot boy ever taken off that spot? A. He was.

Q. And at the time when the off-spot boy was taken off the spot, did you have any conversation with McKinney? A. I did. [1141]

Q. Will you state what Mr. McKinney said to you and what you said to Mr. McKinney?

A. Well, he told me that he didn't have anybody for the off-spot for that night and I should take it myself, and that if possible I should give the Times—some of the Times to the hustler over there, the off-spot hustler for the Examiner, and that if I did give him any of the papers, to not give them to him at the regular wholesale price, but to charge him three cents for them.

(Testimony of Roy Eley.)

Q. After that time did you take care of the off-spot? A. I did.

Q. And how did you take care of it?

A. Well, in the majority of instances I would give the Times to the Examiner hustler, but they changed hustlers out there quite often on the Examiner, and sometimes I would have a little argument with them, and then I would simply lay them down on a big concrete thing they had in there as a base for a light.

Q. Now, I believe you stated that while you were on the spot in Glendale that McKinney told you to keep papers in a [1142] rack there; is that correct?

A. Yes.

Q. And I will show you Board's Exhibit 12 and ask you if the rack was similar to the rack there set out. A. It is very similar.

Cross Examination

Q. (By Mr. Yoakum): Do you hold any office in the Newsboys C. I. O. Union?

A. At the present time, you mean?

Q. Yes. A. No office; no.

Q. Do you have any position?

A. I am chairman of a designated Labor Board Committee.

Q. You have been in attendance at this hearing, this consolidated hearing, continuously since it commenced? A. I have.

Q. You have been sitting at the counsel table with Frank Mouritsen, counsel for the Board?

(Testimony of Roy Eley.)

A. I have.

Q. And consulting with him on different matters? A. I have.

Q. And consulting with Pat Comorre?

A. I have.

Q. Did you ever hold office in this Newsboys Union? [1143] A. Temporarily.

Q. And you now hold no office?

A. No office.

Q. But you are chairman of some committee?

A. I am.

Q. What committee?

A. Well, I believe we designated it as the Labor Board Committee. [1144]

Q. What are your duties as chairman of the Labor Board Committee?

A. Well, if I might state, the Labor Board Committee was set up to look out for the interests of the newsboys during this hearing, and as all committees, they naturally elect a chairman, and I was made chairman of that committee.

Q. And as such what were your duties?

A. Well, I believe they are apparent; sitting mostly at the table with the counsel, as I might say, in an advisory capacity.

Q. Did you have any duties prior to the commencement of the hearing?

A. Yes, I had some duties in regard to getting authorization cards from the different members and preparing the case in general; that is, as an assistant to the counsel for the Board. [1146]

(Testimony of Roy Eley.)

Q. Had you been a hustler prior to this date in 1939 when you stated you started hustling for the Times sheets?

A. I would say, as I understand the term, for approximately 40 years.

Q. But you never sold the Times paper until 1939? A. That is right.

Q. Do you have any idea of how many papers you would sell during the course of an evening?

A. To the best of my knowledge and belief, I believe it has varied from one night, from fourteen up to as high as a hundred and fifty. [1148]

Q. Do you ever lose any papers while you are selling them out there? A. Naturally.

Q. Would you pay for those that you lost?

A. Absolu ely.

Q. Did you ever have any stolen?

A. Naturally.

Q. Did you have to pay for those?

A. I do.

Q. And what price did you pay for the papers?

A. That depends on what time you are speaking of.

Q. I am speaking from the time you first went on the corner at San Fernando and Fletcher.

A. At that time I paid one cent a copy for the dailies and five cents for the Sundays.

Q. On what date was that?

A. That was some time in January, 1939.

Q. And thereafter did you pay a different rate for the [1149] paper? A. I did.

(Testimony of Roy Eley.)

Q. When?

A. On February 9th, I believe it was, I stated.

Q. 1939? A. Yes.

Q. What price did you pay for the daily?

A. 3½ cents.

Q. 3½ cents?

A. Or 1½ cents, I should have said.

Q. What price did you usually sell it for?

A. Five.

Q. Did you pay 6 for the Sunday?

A. Did I pay 6?

Q. Yes. A. I did.

Q. And you would usually sell it for 10?

A. I did.

Q. What did you do with your unsold copies?

A. Turn them back to my district man.

Q. Would he give you full credit?

A. He would.

Q. How many papers did you usually get of the six o'clock?

A. I don't believe the question could be answered as to how many I usually got. If you would specify it by any [1150] particular date, possibly I could tell you. It varied.

Q. What was the variance?

A. Well, the variation was in this—I don't believe it has been stated to the Court—but it has been just recently that the papers started running at six o'clock. Prior to that time the papers run a little after five, and when they did run at a little

(Testimony of Roy Eley.)

after five, the first edition was not complete as to races. At that time it was customary for my district man, to the best of my knowledge, to cover his district and then go on to the airport in Burbank, pick up complete races there, and bring them back to us. So that at that time the ordinary amount of papers that he would give me on the first edition was around 15, but when the change was made so we got complete races on the first edition, naturally the order was increased to cover the amount of papers that he had gave me formerly on two deliveries.

Q. How was the order increased?

A. How was it increased?

Q. Yes.

A. It was automatically increased at that time because I was getting two editions in one.

Q. Did you ever ask that the order be increased?

A. No.

Q. Did you ever have your order increased at your [1151] request? A. At my request.

Q. Yes.

A. Well, not that I remember of. I don't think that I ever requested more papers than what were offered me.

Q. You never requested more, and had your request refused? A. No, sir.

Q. Now, what corner of the intersection were you selling when you first went out to San Fernando and Fletcher?

(Testimony of Roy Eley.)

A. That is on the corner where the market is.

Q. And you call that the off-spot corner?

A. The off-spot corner.

Q. Now, where did you sell? What was the territory that [1152] you covered?

A. You mean on the off-spot?

Q. Yes.

A. I sold on that corner through the market. I would make, oh, as many trips as I deemed desirable through the market, and out on the white line in traffic.

Q. When would you make your trips through the market?

A. Well, I generally used my own judgment on that in this respect. The customers for the market are driving in there constantly to make purchases, and I would try to gage that so that I could catch a complete change of prospective customers at each time.

Q. Did Mr. McKinney tell you when you should go into the market to solicit customers?

A. He told me to keep the market completely covered.

Q. Did he tell you when you were to be in there? [1153]

A. Do you mean the exact time?

Q. (By Mr. Yoakum): Do you understand the question? A. Not exactly.

Q. I will repeat it, then. Did he tell you at

(Testimony of Roy Eley.)

what times you should go to the market to solicit customers?

A. I could answer that yes or no, if I may.

Q. Well, can you answer it yes or no, or do you have to answer it both ways?

A. I would have to answer it both ways.

Q. Well, go ahead and answer it.

A. He told me to go in there and keep the market covered; that is, to make the market often enough so that it would be—anyone in there desiring a paper would be able to purchase it. He didn't specify any time by the clock.

Q. You had never sold at that corner before, had you? A. No, sir.

Q. When you say that Mr. McKinney told you to do this, don't you mean that he suggested to you that that would be a good spot to look after?

A. I believe that I understand the English language.

Q. Can you answer that question?

A. He did not suggest; he told me.

Q. But just what did he say?

A. As I stated before, he told me to see that that market [1154] was covered, to cover that market. In other words, in the slang phrase of the newsboys, to hustle in that market.

Q. Wanted you to hustle in that area?

A. That is the idea.

(Testimony of Roy Eley.)

Q. And you also hustled on what you called the traffic lane? A. Yes, the white line.

Q. The whit line on San Fernando?

A. Yes.

Q. When did you hustle in that spot?

A. Well, ordinarily the traffic is heavy there from the time we first started up until, say, around 9:00 o'clock or 9:30, and at that time, why, I would expend more energies in the traffic line than I would later.

Q. When the customers were there?

A. Naturally. [1155]

Q. (By Mr. Yoakum): Now, are there any other spots that you covered when you were on this so-called off-spot corner, the market corner?

A. Well, I wouldn't exactly call them spots. There was two places I stated before; one, a liquor store that I took a paper and sold, and one a restaurant where I took a paper and sold, which was across the street behind the filling station.

Q. Did you make a profit on those sales?

A. Naturally.

Q. Did you want to go there?

A. Naturally.

Q. Are those the places that you referred to in your testimony as the places that Mr. McKinney told you you must take the papers?

A. That is right.

Q. And you continued to take them there?

A. Naturally.

(Testimony of Roy Eley.)

Q. I suppose he told you to go there?

A. Naturally.

Q. He didn't say you had a customer?

A. He told me to take a paper over there, that I would make a sale. [1156]

Q. (By Mr. Yoakum) Do you have any regular customers out there? Did you have any or didn't you stay there long enough?

A. None I made deliveries to, no.

Q. Did you have any regular people that would come by and buy?

A. Well, I had people that would come night after night for a while, yes. You could call them regular customers, perhaps.

Q. Did they always pay you?

A. Naturally.

Q. Every night? A. Every night.

Q. You never trusted them for anything, did you?

A. No, sir. I am 40 years a hustler.

Q. Did you have a relief man out there?

A. No.

Q. Did you ever get any tips on that corner?

Mr. Mouritsen: That is objected to as incompetent, irrelevant, and immaterial.

Trial Examiner Kennedy: Well, I don't think it is very definite what kind of tips. [1157]

Q. (By Mr. Yoakum) Did anybody ever give you more than—not that kind—I withdraw that

(Testimony of Roy Eley.)

question. Did anybody ever pay you more than a nickel for a paper?

A. Ever pay me more than a nickel for a paper?

Q. The daily, yes. A. No.

Q. You never got more than a nickel?

A. Yes.

Q. Well, now, will you explain what you mean by that? A. Yes.

Q. All right.

A. I have already had a man offer me—give me a dime and when I would offer him his change, he would tell me to keep the change.

Q. Do you understand that to be a tip?

A. Put your own definition on it.

Q. What would you understand it to be?

A. What would I understand it to be? Well, you could call it a tip, I suppose, or anything.

Q. What did you do with that extra nickel?

A. Bought beer for Tom McKinney.

Q. I suppose he told you to buy it?

A. Yes.

Q. Were you treating him? [1158]

A. Yes and no. If I felt like buying him a drink, I would do so, but there were times when he suggested it.

Q. And on all occasions when you got tips you bought Tom [1159] a beer?

A. Not on all occasions.

Q. What did you do then, buy yourself a beer?

A. Sometimes. [1160]

(Testimony of Roy Eley.)

Q. When you first asked Mr. McKinney for a spot, he told you he had one out here at San Fernando and you went out on the bus?

A. That is right.

Q. Now, did he tell you you had to go out on the bus? A. He did.

Q. He said that that was the only way you could go out there?

A. Oh, I could have walked, I suppose. He told me to take the bus.

Q. Well, did he tell you that was a convenient means of getting out to the corner?

A. No; he told me he would pay my fare on the bus.

Q. You had never worked the corner before that night? A. Naturally, no.

Q. And you saw Dick out there?

A. I went out with Dick.

Q. You went out with Dick? A. Yes.

Q. Then Dick told you where to get the papers, is that right?

A. He gave me the papers, that's right. [1161]

Q. Did Dick give you the papers, or did he tell you to get them at the filling station?

A. We both went to the filling station. He gave them to me there as he got them from McKinney.

Q. What time would you usually stop selling?

A. 11:00 o'clock. [1162]

Q. (By Mr. Yoakum) At 11:00 o'clock, what would you do then?

(Testimony of Roy Eley.)

A. I came over and checked in to Dick.

Q. You always checked in at 11:00 o'clock, whether you were sold out or not?

A. That is right.

Q. (By Mr. Yoakum) If you sold out early, you would wait until 11:00 to check in?

A. If I sold out early, I went across the street and got more papers.

Q. From whom? From Dick?

A. That is right.

Q. What if Dick didn't have any papers, what would you do then?

A. That occasion never arose, so I would not know. [1163]

Q. You never sold out? A. No.

Mr. Mouritsen: Just a minute. May we have some period of time specified in these questions, counsel?

Q. I am talking entirely now about the original location at the off-spot corner there early in 1939, I think it was January that it started, and you stayed there for about two months.

A. Something like that.

Q. On the off-spot. And then where did you go?

A. Across the street to the main spot.

Q. Was that a better corner?

A. It was.

Q. How did you get over there?

A. I believe I stated in former testimony that Dick quit and Tom gave me his job.

Q. Did you want the corner?

(Testimony of Roy Eley.)

A. Naturally.

Q. Did you ask Tom to give you that corner?

A. I believe that I did.

Q. When you got over there you sold more papers? A. I did. I worked longer hours. [1164]

Q. Did you ever sell out?

A. Not that I remember of.

Q. What would be your usual draw there?

A. You mean how many papers would I get there?

Q. Yes. The dailies.

A. Well, when I went over there they were still running that early edition, and I might say that a usual night there, if I can recall right—now, I don't want this right down to the paper, but I believe I was given either 26 or 31 on the first edition, and on the 3-Star—or I mean on the Complete, then, I would generally be given what Tom McKinney had left. That was the last spot that he covered on that edition. Then on the 3-Star I would be given from 15 to 20, and on the Midnight from 5 to 10.

Q. Did you used to get more than that when you were on the off-spot, or less?

A. When I was on the off-spot?

Q. Yes. A. Less, naturally. [1165]

Q. How long did you stay on that main spot?

A. Well, until, I believe—I am not exactly certain about that date—some time in June. Now, that might be a little off one way or the other, but I believe about that time.

(Testimony of Roy Eley.)

Trial Examiner Kennedy: June, 1940?

The Witness: 1940; that's right.

Mr. Mouritsen: What?

The Witness: Or 1939, I should have said—1939.

Q. (By Mr. Yoakum) Then you went to Broadway and Brand? A. In Glendale, yes.

Q. What did that corner do while you were there?

A. That corner, if I remember right, used to do an average of about, while I was there, 50 or 60.

Q. Was that more than you did at the——

A. That is right.

Q. ——main spot at San Fernando and Fletcher? [1166] A. That is right.

Q. Did Tom tell you you had to go to that corner? A. Told me I could go if I so desired.

Q. You wanted to go?

A. Naturally, looking for promotion.

Mr. Yoakum: Move the last portion of the answer go out, "looking for promotion," as not responsive, and a conclusion of the witness.

Trial Examiner Kennedy: Read the question.

(The question referred to was read by the reporter, as set forth above.)

Trial Examiner Kennedy: I think that is sufficiently responsive to remain in.

Q. (By Mr. Yoakum) Did you ever sell out when you were up on the Glendale corner, Broadway and Brand?

A. Not that I remember of. I came close to it

(Testimony of Roy Eley.)

a couple of times, but I don't remember of ever selling out there.

Q. Did you ever call in the Times and ask for more papers? A. No.

Q. Was this rack at Broadway and Glendale there when you started operating on that corner?

A. It was.

Mr. Mouritsen: I believe that counsel misspoke himself. Would the reporter please read the answer? [1167]

(The record referred to was read by the reporter, as set forth above.)

Q. (By Mr. Yoakum) Yes. I beg your pardon. Broadway and Brand. Thank you. The answer is still yes? A. Yes.

Q. How many papers did you keep in it?

A. How many papers did I keep in it?

Q. Yes. A. One in each rack is all.

Q. Were there two Times racks there?

A. No. There is three compartments on the rack. That is what I meant. One in each compartment of the rack.

Q. Were any other papers kept in that rack?

A. Sometimes I would extend the courtesy to the Examiner and allow them to put one in there.

Q. Did Tom tell you to do that? A. No.

Q. Did you ever refuse to let the Examiner boy put his paper in there, in the rack?

A. Not as long as it did not interfere with anything that I did.

(Testimony of Roy Eley.)

Q. In about July of 1939 you went back to the main spot at San Fernando and Fletcher?

A. Somewheres around that time. [1168]

Q. How did you happen to leave the Glendale spot; that is, the Broadway and Brand?

A. Why, the way I happened to leave the Broadway and Brand spot in Glendale, Mr. McKinney doesn't have any automobile besides his own for the transportation of hustlers and papers, and so he had a hustler working at Burbank who made a contract, I believe, with Mr. Cohen, and made arrangements for him to haul hustlers out to Glendale for Tom McKinney, and there is a stipulation in that contract; to the best of [1169] my knowledge and belief he stipulated——

Mr. Cosgrove: Just a minute.

Mr. Yoakum: May we have the answer go out and the question read, please?

Trial Examiner Kennedy: I don't know. It might be a proper answer to your question. You asked him about how this situation arose, did you not?

Mr. Yoakum: I think that is the question, but I do not understand the necessity of going into the terms of some contract.

Trial Examiner Kennedy: I don't, either, and I do not know how we are going to find out until we hear the answer. Now I will entertain a motion to strike when he finishes his answer. Complete your answer.

(Testimony of Roy Eley.)

The Witness: Just how far had I got with my answer there?

(The record referred to was read by the reporter, as set forth above.)

The Witness: That the man who was to haul the hustlers out to Glendale for Tom McKinney insisted on being given the spot at Broadway and Brand, and for that reason I was removed from the spot at Broadway and Brand so that he could handle that spot and haul the hustlers out for Tom McKinney.

Mr. Cosgrove: I move to strike out the answer, if the [1170] Examiner please, on the ground it states conclusions and conjectures of the witness, matters the answer discloses he has no direct knowledge of.

Trial Examiner Kennedy: It may go out.

Mr. Cosgrove: We withdraw the question, if we may, Mr. Examiner.

Trial Examiner Kennedy: It may go out.

The Witness: Did you ask me a question?

Trial Examiner Kennedy: No. The question is also withdrawn.

Q. (By Mr. Yoakum) After you returned to your main spot at the Van de Kamp's drive-in, you sold copies of the Times to the Examiner hustlers?

A. On occasions.

Q. And you charged him three cents?

A. I did.

Q. And why did you charge him three cents?

A. On the orders of Tom McKinney.

Q. He told you to charge three cents?

(Testimony of Roy Eley.)

A. He did.

Q. And that was a penny and a half more than you paid for the paper? A. That is right.

Q. Who kept the penny and a half?

A. I did. [1171]

Q. Do you know what a laydown is?

A. I do.

Q. Would you state what a laydown is.

A. A laydown is a place where you lay papers down and use some sort of a container, if one is handy, or if you can get one, or, if not, simply lay them there with a weight or something so that the potential customers coming by, if they so desire, can purchase a paper and leave the money laying there without you being involved in the transaction.

Q. Did you ever make any of those laydowns after you returned to your San Fernando and Fletcher corner?

A. In case I couldn't leave the papers with the Examiner boy and had no off-spotman, yes.

Q. Did you determine when you would make laydowns? A. Did I detemine?

Q. Yes.

A. The determination is apparent, I believe.

Q. Well, it isn't apparent to me. Perhaps it is to everyone else, but did you determine when you would make laydowns?

A. It is customary to make a laydown as soon as you get on the spot and keep it supplied as long as there is any possibility of selling a paper.

(Testimony of Roy Eley.)

Q. Is that what you did? A. Naturally.

[1172]

Mr. Cosgrove: I understand Mr. Yoakum has finished, and I would like to ask one or two questions.

Cross Examination

Q. (By Mr. Cosgrove) In connection with the transaction where in the absence of the offspot boy you were instructed by Mr. McKinney, so you said, to sell the Examiner boy some papers not at the wholesale price, but to charge 3 cents for them—you remember the testimony? A. Yes, sir.

Q. What did you mean by that term, "wholesale price"?

A. Well, the price at which the paper is sold by the people involved, when they are sold in quantities.

Q. Sold by whom and to whom?

A. By the wholesaler.

Q. Who is the wholesaler?

A. I believe you designated him as the district man.

Q. And to whom are they sold?

A. To whom are they sold?

Q. You heard me. A. To the newsboys.

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Eley, was it your practice to [1173] turn in the money for the papers that you received from Mr. McKinney after the conclusion of your operations at the end of the day?

The Witness: While I was on the main spot, yes.

Mr. Hall: Will it be stipulated, Mr. Mouritsen, that the testimony of Thomas McKinney and Roy Eley is not applicable to the case of the Los Angeles Examiner?

Mr. Mouritsen: It may be so stipulated?

Mr. Howard Binford: And may the same stipulation be made with respect to the Stockholders Publishing Company, Inc.?

Mr. Mouritsen: So stipulated.

Mr. Compton: And may the same stipulation be made with respect to the Los Angeles Evening Herald and Express?

Mr. Mouritsen: So stipulated. [1174]

JOHN A. ROBERTS

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Roberts?

A. 209 South Olive Street, Los Angeles.

Q. Have you ever been a Times newsboy?

A. Yes, sir.

Q. When did you first start to sell the Times?

A. In the last part of November or the first part of December, 1938.

Q. And where did you sell?

A. At Vermont and Wilshire.

Q. From whom did you obtain that spot?

A. Frank Curtis.

(Testimony of John A. Roberts.)

Q. Who was Frank Curtis?

A. District man—manager.

Q. For the Times? A. Yes, sir.

Q. Did you have a conversation with him about obtaining the spot? [1175] A. Yes, sir.

Q. Where did that conversation take place?

A. At the loading platform of the Times.

Q. Was anyone else there?

A. Yes. There was a lot of hustlers and different men around there, but nobody that was interested in the conversation outside of me and Mr. Curtis.

Q. Will you state what you said to Curtis, and what Curtis said to you?

A. Well, the first night I went down to the Times I asked several of the district men there if they had any——

Mr. Cosgrove: Just a minute. I understand the question calls for this particular conversation.

Mr. Mouritsen: This particular one with Mr. Curtis.

Q. Just state what Mr, Curtis said to you and what you said to him.

A. Well, I asked Mr. Curtis if he had a spot open in his work. He said, "No, I haven't tonight." He says, "You are a little late, but if you come back tomorrow night around 5:00 or 5:30, I will put you to work."

Q. And did you return the following night?

A. Yes.

Q. Did you have a conversation with him then?

(Testimony of John A. Roberts.)

A. Yes.

Q. Where did that take place? [1176]

A. At the same place.

Q. At the concourse? A. Yes.

Q. And was anyone else present?

A. Well, yes, the same bunch of hustlers and men that accumulates there at night.

Q. Well, what did you say to Curtis, and what did Curtis say to you?

A. Well, I just asked him, I said, "Have you got anything tonight?"

And he said, "Yes, I can put you out tonight," but, he says, "It is strictly a traffic spot on the working of the white line." He said, "If you don't get out there and hustle—" First he asked me if I ever sold papers, and I said yes.

"Well," he says, "it is strictly a traffic spot, and you will have to get out there and get that white line, or you won't sell any papers." He says, "It is up to you to get out there or you can't do any good."

Q. Was that about all the conversation that took place that time? A. Yes, that night.

Q. And did you go out to the spot?

A. Yes, sir.

Q. How did you go out there? [1177]

A. Well, I went out—he said he had a man hauling the hustlers out and taking the papers out and he showed me the man and told me to get in the car there and he would take me out to the spot.

(Testimony of John A. Roberts.)

Q. And the man he designated took you out to the spot? A. Yes.

Well, before I went out he told me where I should work. He said, "Work the traffic coming into the city on Wilshire, that is, coming into the city from the beach."

Q. And at that time did he say anything further to you?

A. No, I don't think so. Not right that night.

Q. Did you see Curtis later during that same night?

A. Oh, yes. I seen him when he came down with the papers, that is, when he made the—he didn't make the delivery to me. I seen him pass by coming to make the delivery.

Q. Did you obtain your papers from Curtis directly or from a main spot boy?

A. Well, I—the car that I rode out in the first night we dropped off on the northeast corner of Vermont and Wilshire. He told me to take them on over to the main spot opposite, across the intersection, and he said that the man over there at the main spot would give me my papers.

Q. This was the fellow that you rode out to the main spot with?

A. No. That was the main spot, the main spot man was [1178] already out there. The man that I rode out with, he went on and delivered to the hustlers, to the other spots, and he had a spot himself. He went on to his own spot.

(Testimony of John A. Roberts.)

Q. And did Curtis come around on a number of occasions—you saw him on that night?

A. Yes, a couple of times that night; yes, sir.

Q. How long did you sell the Times on that night? A. What time did I get there?

Q. Yes. A. 12:30.

Q. What did you do then?

A. Well, those men, the same men, if I remember right, that had taken me up, picked me up and brought us in to town.

Q. Did you ever have any conversation with Curtis after that time or at that time, regarding working after that particular night? A. Yes.

Q. And where did that conversation occur?

A. As I recall it, it was at the loading platform of the Times.

Q. And who were present?

A. Well, just he and I—that is——

Q. And when did it take place with reference to the first conversation you had with him? [1179]

A. Well, it was two or three, or possibly four nights after I went out with him.

Q. What did he say to you and what did you say to him?

A. Well, the corner I had was an awful tough spot, and I told him, I says, "I can't hardly make a go of it here,"

And he says, "Stick around, kid. I will take care of you in a few days," or something like that effect.

Q. How long did you continue to work that spot; that is, the incoming traffic?

(Testimony of John A. Roberts.)

A. If I remember right, I worked there two nights coming in the city, and then I switched over on Wilshire going out of the city, on the white, the same—about five nights there. Four or five or six nights on both them two spots on Wilshire.

Q. And how was that change made?

A. Well, I don't know how. I don't remember just exactly how the change was made. In those I just—they happened to be the boys there—neither one of the spots was any good and whoever got there was kind of—didn't make any effort. They was both practically the same. If the other man was on the spot when I got there he got his papers first and I just taken the opposite side on Wilshire.

Q. On the spot there, are there any racks?

A. Yes, sir.

Q. Did you ever have a conversation with Curtis regarding [1180] those racks? A. Yes.

Q. About when with reference to the time when you first started did that conversation occur?

A. Oh, had a couple of different conversations; if I remember right.

Q. About when did the first conversation regarding racks occur?

A. Well, possibly the first night I went out. I believe as near as I can recall it, it was the first night I went out.

Q. And where did that occur?

A. That was there at the platform, if I recall it, before we left there.

(Testimony of John A. Roberts.)

Q. What did he say to you and what did you say to him?

A. Well, he said, "There is a rack out there," and he said, "Put your papers out there where the people can see them."

Q. And after that time did you put your papers out in the rack? A. Yes, sir.

Q. What kind of a rack was that? Did it have just a place for one paper or for three papers?

A. Well, now, I couldn't say just exactly whether there was the Times or Examiner rack on all the corners or not, but I know the one on the corner on —to follow—well, [1181] there was a Times and Examiner, both, there, if I am not mistaken. They had, it seems to me like two or possibly three places in there that they could put papers.

Q. Is there a drive-in eating stand near that spot?

A. Yes, sir. There is one right across the street where I moved to later on.

Q. When did you move to this spot across the street?

A. Well, as near as I can remember, there was five or six—four, five, or six nights after I started to work.

Q. Did you ever have a conversation with Custis regarding that drive-in stand?

A. Yes, sir.

Q. About when did that conversation occur?

A. Just a few nights after I went to work there.

Q. And where did it occur?

(Testimony of John A. Roberts.)

A. At the loading platform.

Q. Who were present?

A. Just he and I had a conversation there.

Q. What did he say to you and what did you say to him?

A. Well, the man that was there working, at Vermont and Wilshire, going out of town on Vermont, was going to quit, see, and he told me that he was going to quit, and so I asked Mr. Curtis when I went down the next night—that I understood that Frenchie was going to quit, and I asked him how about getting that spot; I understood it was a [1182] little better.

And he said, "Do you think you can handle it?"

I said, "Why, I guess I can."

He said, "You know, it's in a different spot than where you have been working."

He said, "You have to work traffic and cover this drive-in stand." He says, "You have got to watch them cars in there every ten or fifteen minutes and make the stands and work your traffic as much as possible."

And he tole me, he says, "Now, it's all right to go in this stand and go in the bar there and flash your papers, but do not blast your headline or anything like that. The management objects to that, but," he says, "hold your paper up and give the customers a chance to see the paper. Don't cause any disturbance, or anything like that."

And then he said, "Go right back to your safety

(Testimony of John A. Roberts.)

zone." There was a safety zone right in there where I was working.

Q. What did you understand by the use of the expression "do not blast your headlines"?

A. Well, it seems to me, you know, when you are out on the corner you blast your headlines out—yell it out—your headlines.

Q. What you understood was he was telling you not to blast it out, or yell it out?

A. Yes, that's right, in the drive-in stand or in the [1183] lounge.

Q. While you were on these spots, how many different editions of the Times did you handle as a rule each night? A. Three.

Q. What were they?

A. Well, the first edition was generally a one or two-Star, then they had a three-Star, and the R.

Q. Now, did you ever have any conversation with Curtis regarding the handling of these various editions?

A. What do you mean? In the way of displaying or——

Q. Any conversation regarding the display of the various editions, or handling earlier editions with reference to later ones?

A. No, I can't say that I had any conversation with regard to that. I have had an order from—in regard to displaying magazines or something like that. He would tell me—probably before we left the paltform he would say, "We have a magazine——"

(Testimony of John A. Roberts.)

If I remember right, there was a Shirley Temple magazine came out just before Christmas. He told me, "It will sell you some papers if you get that out where the people can see it, and let them know you have got it in the paper. It's up to you to do that.

Q. That was a special feature in the paper?

A. Yes. That was inside of the paper. [1184]

Q. What I have reference to, Mr. Roberts, did Mr. Curtis ever say anything to you about your actions with reference to earlier editions of the paper after subsequent editions had been furnished to you?

A. Well, I don't believe——

Q. Now, that can be answered just yes or no. Do you recall any such conversation?

A. No, not Mr. Curtis.

Q. From time to time while you were appearing on this spot did you receive advertising placards, advertising special features in the Times?

A. Yes, sir.

Q. Did you receive any instructions with reference to those advertising placards?

A. Do you mean from Mr. Curtis?

Q. From Mr. Curtis.

A. No, I didn't.

Q. Did you from anyone else?

A. Yes, sir.

Q. From whom?

A. The main spot man.

Q. And in general, what were those instructions?

(Testimony of John A. Roberts.)

A. Well, as a rule, when the Sunday paper comes out, there is a placard or whatever you call it, to post up on the telephone pole, or something like that, any place you can [1185] tack them up where people can see them, and the main spot men will tell you when they come around with the Sunday paper, they throw out six or seven of them and when you go over to get your papers he says to put them on the telephone pole or something like that.

Q. And did you put them on the telephone pole?

A. Yes, sir.

Q. About how long did you continue to operate on that spot?

A. Right up until a few days before Christmas, 1938.

Q. And were you removed from that spot?

A. Yes, sir.

Q. By whom? A. Mr. Curtis.

Q. Prior to the time when you were removed, did you have a conversation with him?

A. Yes, sir.

Q. And where did that conversation occur?

A. There on the corner of Wilshire and Vermont.

Q. And was anyone else present?

A. No, sir. He was just in the car himself.

Q. What kind of an evening was it with reference to the weather?

A. It was raining.

Q. What did Mr. Curtis say to you and what did you say [1186] to Mr. Curtis?

(Testimony of John A. Roberts.)

A. Well, Mr. Curtis came along with the 3-Stars, and I was standing under the drive-in stand out of the rain, and he gave me a horn and I went out to the curb, and he says, "What the hell are you doing under there?" He says, "You can't sell no papers under there."

And I says, "I can't sell any out there, it is raining, you will get your papers wet, the cars are passing and the windows are rolled up," and the stand was naturally filled up with cars and what sales I had made that night was practically all there at the stand—pardon me; will you read the answer there?

(The record referred to was read by the reporter, as set forth above.)

The Witness: Thank you.

Q. Was that about all the conversation you can recall?

A. "Well," he says, "you will have to get out there and hustle your papers out there, and work just like you would any other night," and that is practically all he said that night.

Q. Did you have a conversation with him after that night? A. Yes, sir.

Q. And when did that conversation occur?

A. The next evening when I reported for work.

Q. And where did it occur? [1187]

A. There at the loading platform of the Times.

Q. And was anyone else present?

(Testimony of John A. Roberts.)

A. No, not—well, there was people around there, but nobody interested in the conversation that I recall, only just he and I.

Q. Now, what did Mr. Curtis say to you and what did you say to Mr. Curtis?

A. Well, I came down there that evening as usual to go to work, and when I came down to speak to Frank to let him know that I was there, and then he says, "Roberts, I can't use you any more; I am going to have to put somebody on there that will hustle that spot. I have got so many papers to sell and I have got to put somebody on there that will work it better than you are."

I said, "Well—well." That is all that was said.

Q. Now, after you were put on the spot, did you report each evening to the Times Concourse?

A. I think I had one evening off during that time.

Q. And on the days that you operated on the spot, were you transported from the Times concourse to the spot? Were you taken out there in a car? A. Yes.

Q. By this same boy that Mr. Curtis had designated when you first obtained the spot?

A. Yes, the same one. [1188]

Q. And the days that you operated on that spot, were you returned to the concourse by the same hustler?

A. No, not right directly to the Times. They would come up through town and they would say,

(Testimony of John A. Roberts.)

"Where do you want to get off"? And wherever it was closest to where you live, that is where it was. They didn't make any special delivery or anything.

Q. Did Mr. Curtis ever furnish you a change apron?

A. Yes, sir—No, I wouldn't say that; I don't believe he ever did.

Q. I believe you stated, Mr. Roberts, that you were off one day; is that correct?

A. Yes, I believe it was only one. I know it was one night, anyway.

Q. With reference to your day off, did you have a conversation with Mr. Curtis? A. Yes, sir.

Q. And where did that occur?

A. There at the loading platform of the Times.

Q. About when did it occur?

A. Well, the regular time when I came down to go to work, but I asked permission the evening before.

Q. Let's find out about that conversation. About how long after you started to sell did the conversation take place? [1189]

A. Oh, it was possibly two weeks.

Q. And it took place at the concourse, is that correct?

A. That is where the conversation was.

Q. Now, who else were present, if anyone?

A. Just the regular bunch that assemble there every night.

Q. Now, will you state what you said to him and what he said to you?

(Testimony of John A. Roberts.)

A. I asked Mr. Curtis, I said, "Mr. Curtis, I would like to lay off tomorrow night."

"Well," he says, "I don't know," he says, "You drop back here tomorrow night at the regular time and if I can get hold of somebody that I think is all right, it is O. K."

Q. Is that about all the conversation that you had?

A. Yes, that night.

Q. Did you have a conversation with him the next day? A. Yes.

Q. Where?

A. At the same place there, at the loading platform.

Q. Was anyone else present?

A. No, just him and I were there having the conversation.

Q. Will you state what that conversation was?

A. Well, I came down and waited around there, and I asked him if he could get a man, and he looked around and finally got one, and he said, "Go ahead and report back tomorrow [1190] evening at the same time, the regular time."

Q. Mr. Roberts, I show you a picture that has been marked Board's Exhibit No. 13, and I will ask you if that is a correct picturization of the place in the street that a traffic spot boy sells.

A. Yes, sir.

Q. And these white lines, they are the traffic lines to which you referred? A. Yes, sir.

(Testimony of John A. Roberts.)

Mr. Mouritsen: You may inquire.

Cross Examination [1191]

Q. Mr. Roberts, your present recollection is that you began to work, I think, probably November of 1938?

A. Yes; it was either the latter part of November or the first of December, 1938.

Q. And you stopped selling papers there just before Christmas? A. That is right.

Q. Do you think you were selling papers there for 30 to 40 days?

A. No, sir, I don't think I was there that long.

Q. Well, would you say 20 to 30 days? [1194]

A. Yes, about 20 to 30 days.

Q. Had you ever sold the Times before that?

A. No, sir.

Q. You began selling papers there after a couple —two, I believe you said, conferences with Frank Curtis, held down at the concourse, or the platform of the Times Building? A. Yes, sir.

Q. Now, where were you living at that time? And you do not have to give me the house number; just generally where it was.

A. If I remember correctly, it was about 119 or 123½ South Main Street.

Q. That is somewhere in the neighborhood of Second and Main? A. Yes, sir.

Q. That would be North Main?

A. No, sir.

Q. South Main?

A. South Main, yes, sir.

(Testimony of John A. Roberts.)

Q. Let's see, that would be about how many blocks from the concourse?

A. Oh, that is only just a block east and—well, it is about the middle of the block. It would be about a block and a half, or a little bit more than that.

Q. Well, a block and a half or two blocks from, the con- [1195] course? A. That is right.

Q. Now, Wilshire and Vermont intersection, do you know approximately how far it would be from your home, or from the concourse?

A. Do I have any idea?

Q. Yes, just approximately.

A. Oh, it is possibly——

Q. State it in miles.

A. Three or four miles, something to that—near to that.

Q. Well, all right. You say you think something about four miles?

A. Well, in the neighborhood of that, yes.

Q. Well, that is close enough. In other words, to get out there to sell those papers from your home and get back to your home after it was finished, it was necessary to have some form of transportation, some conveyance; it was not walking distance, was it?

A. Well, it would have been quite a long walk.

Q. Well, after you sold papers for several hours, you would not feel like walking back that distance, if you could get a ride with some newsboy, would you?

(Testimony of John A. Roberts.)

A. No, sir, absolutely not.

Q. Well, going back and forth in the automobile was a [1196] matter of accommodation to you, was it not?

Mr. Mouritsen: Just a minute. That is objected to as calling for the conclusion of the witness; and immaterial.

Mr. Cosgrove: Well, I think it is very material, but as long as the objection is made to it, I will reframe the question, with the permission of the Examiner.

Q. Did you pay for the ride out, Mr. Roberts?

A. In actual cash?

Q. Yes. A. No, sir.

Q. Did you pay in any form of merchandise?

A. No, sir.

Q. Every night that you went out there you had transportation, did you? A. Yes, sir.

Q. And did you get transportation back every night? A. Yes, sir.

Q. And when you came back, why, they would let you off the closest place to your place of residence?

A. Yes. He generally came up Spring Street or Broadway there, or something like that, and we would ask—well, we would tell him, "Let me off at Second," or Seventh or Fifth or wherever it happened to be.

Q. You would ask the driver to let you off?

A. Yes, sir. [1197]

(Testimony of John A. Roberts.)

Q. At the place that was convenient to your home? A. That is right.

Q. Now, the first night that you talked to Frank Curtis—is he the first man you spoke to down at the concourse that evening?

A. No. As I recall, I asked two or three more of the district men there.

Q. Sir?

A. As I recall, I asked two or three more of the district men there.

Q. Had you known Frank Curtis prior to this time? A. No, sir.

Q. How did you know he was a district man?

A. Well, I don't—I imagine I asked someone to point me out a district man.

Q. You asked somebody what?

A. I imagine I asked somebody to point me out some district man.

Q. You do not now definitely recollect that?

A. No, I don't.

Q. What was your reason, Mr. Roberts, for asking someone to point out the district man?

A. Well, I naturally supposed they did the hiring.

Q. Well, you had sold papers before, hadn't you? A. Yes, sir. [1198]

Q. And you knew that the district man brought the papers out to the street intersections where they were sold, did you not? A. Yes, sir.

Q. And had you been selling papers a matter of months before November, 1938?

(Testimony of John A. Roberts.)

A. Well, it was a matter of about a year, yes, sir.

Q. What paper were you selling.

A. The Examiner. [1199]

Thursday, June 20, 1940.

Met, pursuant to adjournment, at 9:30 o'clock A.M. [1203]

Q. (By Mr. Cosgrove) At the time of the adjournment last evening, I think I was asking you about the conversations that you had down at the platform or concourse with Mr. Frank Curtis, and particularly with reference to the first talk you had.

Now, the second talk you had, Mr. Roberts, was the following evening, was it not?

A. Yes, sir; that was the following evening.

Q. Now, at the second conference, Curtis made known to you that there was a vacancy, or spot, as you call it, where you would be able to sell the Times?

A. He told me he could use me that night in his work.

Q. Did he tell you where that vacancy was?

A. Yes, sir.

Q. That night did you go out in an automobile, or did you go out in a bus? [1205]

A. Went out in a car. [1206]

Q. That first night that you went out, did you get

(Testimony of John A. Roberts.)

your papers, that you afterwards sold, downtown or out on the Vermont and Wilshire corner?

A. Out on the main spot of Wilshire and Vermont.

Q. Did you get it over on the main spot?

A. Yes, sir.

Q. So after you got out on the northwest corner, you walked over to the southeast corner before you got your papers? A. That is right.

Q. From whom did you get your papers? Do you know?

A. Well, I don't know his name. The main spot boy counted [1207] out the papers there.

Q. From another boy there?

A. That is right.

Q. Did he tell you where you should go, or did you know at that time where you should go?

A. Well, Mr. Curtis told me I should work on the traffic coming into the city on Wilshire Boulevard. [1208]

Now, when you got those papers, did you know how much you were being charged for them?

A. Yes, sir.

Q. Who told you? A. Mr. Curtis.

Q. How much did he tell you? [1209]

A. I was charged one cent on them.

Q. How much did you sell it for?

A. Five.

Q. You kept the difference between the one and the five? A. That is right.

(Testimony of John A. Roberts.)

Q. So the first Saturday night that you went out you sold the Sunday paper Saturday night?

A. That is right.

Q. And for that Sunday paper, how much were you charged?

A. I was charged five cents.

Q. And how much did you sell it for? [1210]

A. Ten cents.

Q. And the difference between the five cents and the ten cents, did you keep that?

A. Yes, sir.

So that the only money you made out there, the only money you got for your efforts out there was the difference between the one cent that you paid for the daily and the five cents for which you sold it; is that correct? A. Yes, that is all.

Q. That is all you got? A. Yes.

Q. And on Saturday nights all the money you made was the difference between the five cents that you paid for the paper and the ten cents that you sold it for? A. That is correct. [1211]

Q. And you say that somebody instructed you to put papers in those racks the first night you were out there? A. Yes, sir.

Q. And that was whom? A. Curtis. [1213]

Q. Do you remember on which of these corners you sold the most papers? A. Yes, sir.

Q. That was three corners you worked there, wasn't it?

A. Yes, sir; that was three corners.

(Testimony of John A. Roberts.)

Q. Which one did you sell the most papers on?

A. At Wilshire and Vermont, at the drive-in sandwich stand.

Q. That is the northwest corner?

A. That is right.

Q. Is that the place where you were standing the night that you had the talk with Mr. Curtis, the night it was raining?

A. Not when I had the talk I wasn't standing there.

Q. Well, were you working that corner?

A. Yes, sir.

Q. I didn't understand—I heard what you said when you told about where you were standing at the time Mr. Curtis came up there, and would you tell us again where you were standing? [1227]

A. I was standing in where they served—where the counters are there, where the people sit and drink and eat, at the entrance where the girls come in and get their service trays. I was standing in back out of the rain.

Q. In other words, the building where the sandwiches and things that are sold are prepared.

Does it have a sort of canopy where you can stand in out of the weather or do you have to go through a door?

A. I don't know whether there is a canopy there. I was standing back in the building. I couldn't say whether there was a canvas over that or not.

Q. Well, was there sort of an approach over it?

A. Well, I don't recall.

(Testimony of John A. Roberts.)

Q. You were not standing in the rain, were you?

A. Certainly not.

Q. Then you were standing underneath some sort of shelter, weren't you? A. Yes, sir.

Q. Did you have to go through a door to get in under that shelter?

A. Well, I don't know whether I was standing in back of the open door or out under the canvas, or what. I know I was standing under either a canvas or under the roof of the stand.

Q. It was raining hard, was it?

A. Yes, it rained hard. [1228]

Q. What time of night was it?

A. Oh, you mean when I had the conversation with Mr. Curtis?

Q. Yes.

A. Oh, I don't know. It was sometime around 10:00 o'clock, something like that. Maybe a little later. It might have been a little earlier. I don't know.

Q. You do not remember what time it was. Do you remember what he said, though?

A. Sure I remember what he said.

Q. Were you standing under the shelter when he spoke to you? A. No, sir.

Q. Did he call you out from under the shelter?

A. He blowed his horn.

Q. You recognized his horn?

A. Why, sure.

Q. Sir? A. Yes, sir.

(Testimony of John A. Roberts.)

Q. You knew it was not somebody blowing the horn to attract your attention to purchase a paper?

A. Well, might have—when the horn sounded and attracted my attention, why I saw it was him, and I went on out.

Q. In other words, you recognized who it was when you heard the horn and looked out at the car; you then recognized who it was?

A. Oh, yes, sir. [1229]

Q. Now, what was it he said to you?

A. He said "What the hell are you doing up under there"? He says, "You can't sell no papers under there."

Q. And what did you say in response?

A. Well, I told him that "It is raining and I got in there to keep dry and keep my papers dry. The traffic and all the people coming down had their windows rolled up, and there was no chance for a sale, and what sales I had made had been around there, and I was trying to keep——"

Q. (Interrupting) What did he say?

Pardon me; did you finish?

A. I think that is about all I said. There might have been something else, a little bit.

Q. Did he make any response to that?

A. I can't remember just exactly whether he made any more remarks.

Q. Did he leave then? A. Yes.

Q. And go on down the street?

Did you go back under the shelter?

A. Sure.

(Testimony of John A. Roberts.)

Q. The next night you had a conversation with him down at the platform, or concourse, as some of the witnesses have called it; is that true?

A. Well, yes, that's right. [1230]

Q. Did he speak to you first, or did you speak to him first?

A. I don't recall. I don't recall who spoke first.

Q. By the way, was there anybody in the car with him when he spoke to you the night it was raining? A. No, sir.

Q. Well, the next evening what was the conversation as you now recall it?

A. Well, I just reported down there as usual and went up and spoke to him to let him know I was there.

Q. What did you say?

A. I don't think I said anything. I just spoke to him.

Q. "Good evening" or "Hello," or something like that?

A. I probably said "Hello."

Q. Do you have any recollection of that?

A. No, I don't have any recollection. I walked up and spoke to him. Lots of times you just walk up and they see you there.

Q. I am talking about this particular evening.

A. I don't remember. I know I reported back.

Q. All right, you don't remember. That is all. What did he say, and what did you say?

A. Well, he just told me "Roberts, I am going

(Testimony of John A. Roberts.)

to have to put somebody else on that corner that will get out there and shake it up and sell papers. I have got so many papers to sell, and I have got to have the sales." [1231]

Q. All right.

Did you work that night? A. No, sir.

Q. And you haven't sold any papers for the Times since? A. Yes, sir.

Q. Well, now, that was about Christmas time of 1938? A. Yes, sir.

Q. I think you said a little before Christmas?

A. A little before Christmas. I know I wasn't working Christmas.

Q. Well, how long after that did you again commence selling the Times?

A. I never sold the Times, hired by the Times' men, after that. I had a combination spot, but I was hired by the Examiner.

Mr. Cosgrove: Would you please listen to the question.

May we have it read, your Honor?

Trial Examiner Kennedy: You may.

(The question referred to was read by the reporter, as set forth above.)

Mr. Hall: May I have the answer read?

(The answer referred to was read by the reporter, as set forth above.)

Mr. Hall: I move to strike out the answer as not responsive. [1232]

Trial Examiner Kennedy: It may go out.

(Testimony of John A. Roberts.)

Read the question again, please?

(The question referred to was read by the reporter, as set forth above.)

Q. (By Mr. Cosgrove) Do you understand the question? A. Yes, sir.

Q. All right. Will you please answer it?

A. I don't know. It was a short time afterwards, possibly maybe a month or two or three weeks. I don't know. It took quite a little while.

Q. Where did you start selling the Times the next place? A. Slauson and Crenshaw.

Q. Slauson and Crenshaw

A. That is right.

Q. And at Slauson and Crenshaw, did you sell the first edition and second edition the same as you had been selling at Wilshire and Vermont?

A. Of the Times, you mean?

Q. Yes. A. Yes, sir.

Q. And what did you get for them when you sold them?

A. I am not positive whether that was after——

Q. Now listen to the question. I don't want to confuse you. It is a simple question.

When you sold the paper to the man that bought it from you, how much did you get for the paper?

[1233] A. Five cents.

Q. Now, how much did you pay when you bought those papers?

A. As near as I can recollect, I believe at that time—will you read the question, please?

(Testimony of John A. Roberts.)

(The question referred to was read by the reporter, as set forth above.)

The Witness: I am not sure whether it was a cent and a half or a cent for the daily.

Q. (By Mr. Cosgrove) From whom did you buy them?

A. The regular man in the district, Walt Verry. As a rule he delivered the papers to me.

Q. That was at Slauson and Crenshaw?

A. Yes.

Q. What was the man's name?

A. That delivers papers there?

Q. The man from whom you bought them?

A. Walt Verry delivered them there to me.

Q. That is a Times' district man?

A. That is right.

Q. What did you mean when you said a little while ago that you bought them from the Examiner man?

A. I don't believe I made such a statement.

Q. Well, when you started selling the Times a short time after Christmas, 1938, you started selling at Crenshaw and Slauson, is that correct [1234]

A. That is right.

Q. And you got your papers from a Times district man named Walter Verry?

A. That is right.

Q. Did you go down to the concourse and ask Walter Verry if he had a vacant spot?

A. No, sir.

(Testimony of John A. Roberts.)

Q. How did you get in touch with him?

A. I didn't get in touch with him.

Q. With whom did you arrange to sell papers at Slauson and Crenshaw?

A. I was hired by the Examiner, what is called a combination spot. You had both papers.

Q. You were hired.

How much were you paid?

A. Well, I was put to work or hired, or whatever you want to call it.

Q. I see. You weren't paid anything, were you?

A. Well, I made some money out there. I don't know whether I was paid it or not. I made it.

Q. What you made, Mr. Roberts, was the difference between what you sold the paper for and what you bought the paper for; isn't that correct?

A. I don't know how that question is. Will you read that again? [1235]

Q. I will reframe it now and see if we can understand one another.

You sold the paper for a nickel, didn't you?

A. That is right.

Q. And you bought the paper for a cent or a cent and a half? A. That is right.

Q. And the difference of 3½ cents or 4 cents, whichever it was, you kept?

A. That is right.

Q. That was your profit in the transaction?

A. Yes, sir.

Q. And when you say you made money, you

(Testimony of John A. Roberts.)

mean that you got that profit out of the sale of the paper?

A. Yes, the papers I was selling, sure.

Q. And that is all the money you got, isn't it?

A. Yes. [1236]

Q. Now, going back to the corner of Vermont and Wilshire, and the time that you went over to the northeast corner. Now you have in mind the northeast corner. That is the second corner you worked. Do you remember that? Is that correct?

A. The northeast corner?

Q. Yes.

A. Yes, that was the second corner.

Q. Now, did you work there more than one night?

A. I wouldn't say. I don't know whether it was a night or two or three; somewhere along there. I don't remember.

Q. Well, do you know why you left the southwest corner and went to the northeast corner?

A. Yes, I think I do.

Q. Why?

A. Well, I think that I previously testified those two cor- [1239] ners were practically the same, and whatever man happened to get out there first, he would just probably go over there. He would be over there, and it didn't make much difference where you were. [1240]

(Thereupon, the document above referred to was received in evidence and marked as Re-

(Testimony of John A. Roberts.)

spondent, Times-Mirror Company's Exhibit No. 4.) [1241]

Q. (By Mr. Cosgrove) Now, I will show you a photograph, which I will ask to have marked Times' Exhibit No. 5 for identification, and I will ask you if you will study the photograph for a minute, and I call your attention to the Owl Drug Company sign on the southeast corner of Vermont and Wilshire, and to the drive-in station, as it is called, which is on the northwest corner, where you were working the rainy night, and to the safety zone alongside the street car tracks, and I will ask you if that appears to be a picture of the intersection of Wilshire and Vermont looking south on Vermont?

(Thereupon, the document above referred to was marked as Respondent, Times-Mirror Company's Exhibit No. 5 for identification.) [1243]

Mr. Hall: Will it be stipulated the testimony of John Roberts has no application to the Los Angeles Examiner's case?

Mr. Mouritsen: With the exception of that part pertaining to his activities on Slauson and Crenshaw, I will so stipulate, if that is acceptable.

Mr. Hall: Well, I guess we had better have him back on the stand for a little more cross examination then, if that is the situation. [1245]

Trial Examiner Kennedy: Do you wish to have him back on the stand?

Mr. Hall: Yes.

Mr. Hall: I will accept the stipulation with

(Testimony of John A. Roberts.)

counsel's limitation, which I understand to be this: That the testimony of John Roberts is not applicable to the Los Angeles Examiner case except with respect to Mr. Roberts' activities at the corner of Slauson and Crenshaw. Is that correct?

Mr. Mouritsen: That is correct.

Mr. Howard Binford: May it be stipulated, Mr. Mouritsen, that the testimony of the witness John Roberts has no application to the Stockholders Publishing Company?

Mr. Mouritsen: It will be so stipulated.

Mr. Compton: And the same stipulation as to the Los Angeles Evening Herald and Express?

Mr. Mouritsen: It is so stipulated. [1246]

PHILIP JOSEPH TELLIS

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. Have you ever been a Times newsboy?

A. Yes, sir.

Q. While you were a Times newsboy, did you ever have a conversation with any district manager regarding the handling of other publications?

A. I have.

Q. And about when did you have that conversation?

(Testimony of Philip Joseph Tellis.)

A. About two months ago. About April—about the middle of April. [1247]

Q. The middle of April, 1940? A. 1940.

Q. With whom did you have such conversation?

A. Bill Moore.

Q. Now, what did Mr. Moore say to you and what did you say to Mr. Moore?

A. Mr. Moore told me that he was building up that spot and [1248] that he did not want me to handle the Examiner. It was strictly a Times corner.

Q. At that conservation, did he say anything respecting any other publication?

A. Not—not at the time, no.

Q. Did you have any other—strike that. Was that about all of the conversation that you recall?

A. Practically all.

Q. And did you act in accordance with what he said to you in that conversation?

A. Well, no. Couldn't and make a living.

Mr. Cosgrove: We move that the last part of the answer, "I couldn't and make a living" be stricken out as not responsive.

Trial Examiner Kennedy: It may go out. The answer "No" may remain.

Q. (By Mr. Mouritsen) Did you have a conversation at that time respecting any other publication? A. No.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Cosgrove) Mr. Tellis, are you still

(Testimony of Philip Joseph Tellis.)

selling the Times? A. Times?

Q. Are you still selling the Times? [1249]

A. Times? Yes, sir.

Q. How long have you been selling the Times?

A. Well, off and on since the first of the year.

Q. That is 1940? A. 1940.

Q. Have you been at the same location all of this time?

A. No. I have changed around, several locations.

Q. At what corner were you selling in the middle of April, 1940, when you had this conversation with Mr. Bill Moore? A. Northeast corner.

Q. What intersection?

A. Alvarado and Beverly.

Q. Alvarado and where? A. Beverly.

Q. What corner were you working there? What corner were you selling? What corner were you occupying when you were selling?

A. The north—northeast.

Q. You sold all editions of the Times, or just the evening edition? A. Evening.

Q. What time did you go on the corner?

A. On week days, about 6:00 o'clock; Saturdays, at 2:00; and Sundays at 4:00.

Q. Do you live in that neighborhood? [1250]

A. Yes, sir.

Q. How far from Beverly and Alvarado do you live? A. About eight blocks.

Q. Do you go down to the concourse and come

(Testimony of Philip Joseph Tellis.)

out with the papers, or do you go from your home—

A. (Interrupting) Well, as a rule I did.

Q. As a rule you came down——

A. I went out in the machine. I would go down to the Times and come out to the corner.

Q. And come out?

A. As a rule. Once in a while I would go to the corner.

Q. Well, why did you sometimes—did you walk over to the corner from your home?

A. Yes, sir.

Q. Why did you sometimes go directly over to the corner and at other times go down to the concourse and ride out?

A. Well, I would be—if I was late I would go right out on the spot, and if I had time, I would go down to the Times and ride out.

Q. How did you get from the concourse—that is, the Times' platform, as you call it—how did you get from the concourse out to Beverly and Alvarado? A. By machine.

Q. And whose machine was it?

A. It was the distributor's, Bill Moore. [1251]

Q. One of the men that hauled out a number of newsboys and a number of papers?

A. I would either ride in a sedan, or on Saturdays we would ride out on the truck.

Q. Did you have to pay any transportation?

A. Never paid no transportation.

Q. Did you work a traffic line as well as the corner? A. Worked traffic, yes.

(Testimony of Philip Joseph Tellis.)

Q. The traffic is heavy there——

A. (Interrupting) Pretty heavy.

Q. (Continuing) ——at 6:00 o'clock in the evening, isn't it?

A. Pretty heavy between 6:00 and 8:00. Pretty heavy traffic. And it would drop off until about 10:00—10:00 until 11:00, when it would pick up.

Q. Did you get any salary from the Times?

A. No salary. I was supposed to work as an independent merchant. I always considered myself as an independent merchant. Bought my papers and sold.

Mr. Cosgrave: That is all, Mr. Tellis.

Trial Examiner Kennedy: Just a minute, Mr. Witness.

Is there any further examination?

(No response.)

Trial Examiner Kennedy: Do you have any Social Security card?

The Witness: Yes, sir. [1252]

Trial Examiner Kennedy: Do you know who is registered as your employer under Social Security?

The Witness: Well, our transfer company out in Hollywood. Let's see. I can't think of the name at the present time.

Trial Examiner Kennedy: When did that registration take place with that company?

The Witness: About two years ago.

Trial Examiner Kennedy: And you have made no change since that time?

(Testimony of Philip Joseph Tellis.)

The Witness: No change on the Security card, no, sir.

Trial Examiner Kennedy: All right.

Is there anything further?

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Tellis, did you ever receive a bonus from the district man for building up the corner? [1253]

The Witness: No, I never got any.

Q. (By Mr. Mouritsen) During the period you were working out at this spot at Alvarado and Beverly, did you build that spot up there so that you sold more papers at the end of the time than you did at the beginning?

A. There was nobody there for probably two or three years, and I was told that that corner could not be built up, and I said I could sell ice boxes to Eskimos in Alaska, and I went up there and I built it up and I built it up so good that all the distributors wanted to take it away from me.

Q. Did Mr. Moore give you anything for building that corner up? A. No.

Mr. Hall: Will it be stipulated, Mr. Mouritsen, that the testimony of Phillip Joseph Tellis has no application to the Los Angeles Examiner case?

Mr. Mouritsen: That may be so stipulated.

Mr. Compton: The same stipulation for the Los Angeles Evening Herald and Express?

Mr. Mouritsen: So stipulated.

(Testimony of Philip Joseph Tellis.)

Mr. Howard Binford: And the same stipulation for the Stockholders Publishing Company? [1254]

Mr. Mouritsen: So stipulated.

(Witness excused.)

JOHN FRANCIS FIELDS

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Fields?

A. 706 West Third Street, Los Angeles.

Q. Have you ever been a Times newsboy?

A. Yes, sir.

Q. When did you first start to handle the Times?

A. Approximately, about September 13, 1938.

Q. And did you obtain a spot at or about that time?

A. No, I did not. I worked as an extra relief hustler.

Q. Handling what paper?

A. The Los Angeles Times.

Q. Well, after that time did you obtain a regular spot? A. Yes.

Q. And approximately when was that?

A. About—I would judge about September 20th, one week later.

(Testimony of John Francis Fields.)

Q. And the same year? [1255]

A. That is right.

Q. 1938? A. 1938.

Q. From whom did you obtain the regular spot?

A. Bill Moore.

Q. Where was the spot?

A. At Beverly and Western.

Q. Was that a main spot or an off spot?

A. That was a main spot.

Q. Prior to the time you obtained the spot, did you have a [1256] conversation with Mr. Moore respecting the spot? A. Yes. The main——

Q. Well, that is the answer, "Yes."

Where did you have that conversation?

A. At the concourse, before I went to the corner.

Q. Now, with reference to this spot, what did Mr. Moore say to you, and what did you say to Mr. Moore?

A. Well, the main substance of the conversation was that I was to be in charge of the main spot and to check in three off corners.

I will put it in a different way. "You are to take over the main corner and check in three off corners, be responsible for the three off corners daily, and by that I mean that you are to be entirely responsible for the cash taken in. At [1257] the end of the night, you check in to me and account for the newspapers;" and the corners were to be checked in at a specific time at night. The time mainly given was midnight, and I was to report daily at the Times

(Testimony of John Francis Fields.)

concourse at approximately—I believe 4:30 at that time on the week days and 2:00 o'clock on Saturday, and 3:00 o'clock on Sunday, and to check in when he came around, approximately around 1:00 A. M. [1258]

Q. Now, state what he said?

A. That there would be an Examiner man working with me on the corner, and that I was to entirely ignore the Examiner altogether. In other words, if the people want an Examiner, don't make any effort to get it. "You work for the Times."

Q. Is that all that you can recall of the conversation? A. Yes, that is about all.

Q. To refresh your recollection, did Moore say anything to you respecting the traffic lines on that spot?

A. Well, that particular spot where I was was a trolley zone——

Q. (Interrupting) The question is, Mr. Fields, do you recall anything that Mr. Moore said at that time respecting the traffic lines, and that can be answered yes or no. A. No, I don't.

Q. Do you recall anything he said at that conversation regarding the safety zone or street car zone? A. Yes, I was instructed——

Q. (Interrupting) Well, the answer is yes. Now, what did he say?

A. I was instructed to work in the safety zone regularly, to work mostly the traffic.

Q. In that conservation, did Mr. Moore say

(Testimony of John Francis Fields.)

anything to you respecting a drive-in stand on that corner? [1259] A. No.

Q. In that conversation, do you recall his saying anything about racks on that spot?

A. If I recall correctly, yes, there was a Times rack on that side.

Q. Now, the question isn't whether there was a rack, but if you recall anything he said at that first conversation respecting any racks. Now, that can be answered yes or no. A. Yes.

Q. Now, what did Mr. Moore say to you regarding any racks at that spot?

A. The racks were to be covered at all times with a display. In other words, either placards or the edition of the newspaper, the latest edition of the newspaper.

Q. Now, after you had the conversation with Mr. Moore, what next did you do?

A. Well, I followed the instructions——

Q. (Interrupting) I mean after you had the conversation at the concourse, what next happened with you?

A. Oh, I was taken out by car to the corner.

Q. Did Mr. Moore take you out?

A. Yes, sir.

Q. Prior to that time, had you worked that corner? Had you handled the Times on that corner?

A. No, I had not. [1260]

Q. And after that time, did you act in accord-

(Testimony of John Francis Fields.)

ance with this first conversation you had had with Mr. Moore respecting this spot?

Mr. Cosgrove: May I hear the question, please?

Trial Examiner Kennedy: Read the question.

(The question referred to was read by the reporter, as set forth above.)

Mr. Cosgrove: The question is objected to, if the Examiner please, on the ground it calls for a conclusion of the witness, not a recital of fact. He asked him here if he worked in accordance with the instructions. If he says yes or no to that, there is no way of cross examining upon it. He ought to be compelled to say what he did and the Examiner and the Board will determine whether or not he acted in accordance with the instructions.

Trial Examiner Kennedy: Read the question.

(The question referred to was read by the reporter, as set forth above.)

Trial Examiner Kennedy: You may answer.

The Witness: Yes, sir. I followed the——

Mr. Cosgrove (Interrupting): Just a minute, Mr. Fields. The question is answered.

Q. (By Mr. Mouritsen) And from time to time after that time did you receive advertising placards from Mr. Moore? A. Yes, sir. [1261]

Q. Did Mr. Moore ever furnish you a change apron? A. Yes, sir.

Q. And did you use that in your operations on the spot? A. I did.

(Testimony of John Francis Fields.)

Q. How long did you remain on that spot, Mr. Fields? A. Approximately about two weeks.

Q. And are you now engaged in selling the Times? A. Yes, I am.

Q. And at what spot?

A. Sixth and Broadway.

Q. Are you a member of the Newsboys Union?

A. Yes, sir.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Yoakum) Do you hold any office in the Union? A. Yes, I do.

Q. What office do you hold?

A. I am a member of the Executive Board, and also a member of four standing committees.

Q. Had you ever sold newspapers before September, 1938? A. No.

Q. How did you get this main spot at Beverly and Western?

A. Well, I originally went to the concourse, the Times concourse, and tried to get a corner, and Bill Moore said he had some extra work to do, so I lined up with him for [1262] approximately one week on extra work, and the latter part of the week Beverly and Western was open and I worked it for the one day, and he told me that I would work it temporarily until he got a man with a car. In other words, I would be in charge of the main spot until he got a man with a car, as he needed someone to bring the hustlers out to the corners.

(Testimony of John Francis Fields.)

Q. You knew then that your efforts at Beverly and Western were going to be temporary?

A. That is right.

Q. How many papers were left at that corner, this main spot [1263] corner?

Mr. Mouritsen: May we have the time, the period, specified?

Mr. Yoakum: Well, this two-week period that he worked this main spot corner at Beverly and Western.

The Witness: Well, I don't believe I can answer that accurately as it is about a two-year period practically now, but I believe I was left a bundle on the first run, fifty papers.

Q. And did you dish those out to the other boys?

A. Yes.

Q. What did you charge them for those papers?

A. If you mean did I collect——

Q. Did you charge them anything for the papers?

A. Oh, yes, I charged them at the rate of one cent a copy. [1264]

Mr. Cosgrove: Well, it is your understanding, isn't it, Mr. Yoakum, that these questions apply to the operations at Beverly and Western during the two-week period that this young man was there?

Mr. Yoakum: That is right.

Trial Examiner Kennedy: Is that your understanding, Mr. Witness?

The Witness: Yes, sir.

Q. (By Mr. Yoakum) Did you sell any other

(Testimony of John Francis Fields.)

papers while you [1265] were out there on the corner? A. No.

Q. You didn't sell any magazines, either?

A. No.

Q. You had never previously worked that corner, prior to this date in September, 1938?

A. No, I had not.

Q. From whom did you acquire the change apron? A. Bill Moore.

Q. How did you get it?

A. He supplied it to me when I first was sent to the corner.

Q. Did you ask him for it?

A. No, he gave it to me. He gave it to all the corners.

Q. What do you mean by "all the corners"?

A. That is, I mean all his hustlers, anyone that went to work for him, he gave them an apron.

Q. How do you know that?

A. Well, it was done in my presence at this particular corner.

Q. Do you intend your answer now to refer to the hustlers on that corner, that intersection?

A. Well, I believe I do in this case, yes.

Q. You are not referring to other hustlers on other locations? A. No.

Q. They all wear their aprons? [1266]

A. Yes.

Q. Do you know why they wear them?

A. To advertise the paper. That was the understanding.

(Testimony of John Francis Fields.)

Q. Did they help the hustlers? A. Yes.

Q. How did they help them?

A. Well, it was just an advertisement to show what paper you represented on the corner.

Q. Did it help you sell papers?

A. I believe it did.

Q. Did you use the apron for any other purpose? A. No, sir.

Q. You did not put any money in it?

A. Yes. It was a change apron.

Q. And you did put money in it? A. Yes.

Q. What did you pay for the apron?

A. Nothing. [1267]

Q. How long have you been at this Sixth and Broadway?

A. Approximately about a year and four months, I believe.

Q. Since about February or March, 1939?

A. That is right. The latter part of February. I remember it now.

Q. These questions from here on, unless otherwise designated, are going to refer to Sixth and Broadway, and not to Beverly and Western.

What corner did you cover?

A. The southwest corner, in front of Mullen and Bluett.

Q. Is that the main spot?

A. No; it was the off spot at that time.

Q. Is it the main spot now?

A. Well, it was until a recent period here, and there has been a change made again.

(Testimony of John Francis Fields.)

Q. From whom did you get your papers at that time? A. Bill Dyer.

Q. Bill Dyer, district man?

A. That is the district man.

Q. Did you pay him for the papers?

A. No.

Q. Did he give them to you?

A. He credited them to me, and the bill was collected at the end of the night.

Q. Well, you paid for the papers then. You thought I meant, [1268] did you, that you would pay him at the beginning of the evening?

A. Yes, that is what I understood.

Q. But you paid him later in the evening?

A. Later in the evening, yes.

Q. And at what rate for the dailies?

A. A cent and a half for the dailies.

Q. And what would you sell them for?

A. Five cents.

Q. Did you keep the difference?

A. Yes.

Q. Do you sell the One Star and the Three Star and the "R"? A. Yes, sir.

Q. The six, nine and midnight, is that what you call them? A. Yes, sir.

Q. What time of night do you pay for the papers?

A. Well, do you—strike that.

The period of Bill Dyer—in other words, Bill Dyer works three days a week, I believe. Why,

(Testimony of John Francis Fields.)

I am checked in approximately about 12:30. Between——

Q. (Interrupting) Then on the nights that Bill Dyer works there, you pay at about 12:30?

A. With the exception of Saturday, I pay him around 1:00 o'clock.

Q. Well, that is the Sunday paper. We are talking about the [1269] dailies.

A. Daily, yes.

Q. And other nights there is a relief man on, do you pay him at some other time, or is it approximately the same time?

A. It is around 1:00 o'clock.

Q. Who is the relief?

A. Huey Campbell.

Q. Now, when you pay Dyer, do you stop selling papers? A. Yes.

Q. You do not sell any papers after that time?

A. No. The papers are checked in.

Q. What time do you receive—you receive the midnight at what time?

A. Approximately about 11:40.

Q. Do you ever have any papers left?

A. Yes, sir.

Q. Do you return them to Dyer?

A. Yes, sir.

Q. Or Campbell, as the case may be?

A. Or Campbell, yes.

Q. You do not pay for those papers that you return? A. No, sir.

(Testimony of John Francis Fields.)

Q. Since you have been down on the Sixth and Broadway spot, have you ever lost any newspapers?

A. If you refer to the Times, I don't believe I have, no. [1270]

Q. You have never lost a Times?

A. No.

Q. You have never had one taken?

A. No.

Q. You never had one damaged by a pedestrian or a dog or an automobile, or in any other manner?

A. Well, I say that occasionally there has been a wind come up unexpectedly, and a couple of papers have blown out in traffic.

Q. Were you able to use those papers?

A. No.

Q. What did you do with them?

A. Well, they were in a thousand pieces, practically, when I got hold of them, and so I had to put them in my ash can, and finally pay the bill.

Q. You paid for those?

A. Paid for them.

Q. Do you sell any other papers?

A. Yes.

Q. What do you sell, Mr. Fields?

A. The People's World, Ham and Eggs—that is, I have handled the Ham and Eggs—it has not been up there lately; the Socialist Call.

Q. I do not know that name. Socialist Call?

(Testimony of John Francis Fields.)

A. Socialist Call. [1271]

Q. That is a newspaper, is it?

A. Yes, sir. It is an organ of the Socialist Party.

And the Jewish Forward.

Q. Now, is that the same as the Freiheit?

A. No. That is a different one.

Q. Do you sell the Freiheit?

A. No, I don't.

Q. What about The Voice?

A. Yes, I carry that.

Q. The Wall Street Journal?

A. No, sir.

Q. But not the Racing Form?

A. No, sir.

Q. Well, now, are there any other newspapers that you sell?

A. The News. That is, the evening edition of the News. It is not listed as the Evening News, but that is the edition.

Q. You do not sell the Examiner?

A. Yes. I have the Examiner as a laydown since this change has been made recently, and I also carry the Herald for an accommodation. It is no—no commission.

Q. You mean by that that you have an arrangement with the Herald hustler that you carry the Herald?

A. No. I have an arrangement with the Examiner hustler. In other words, he handles the

(Testimony of John Francis Fields.)

Evening News for my benefit on that side, and whatever is taken in is my profit, and vice versa on the Herald. [1272]

Q. Let's see if I have that correct.

The Examiner hustler by arrangement with you carries the Times? A. That is right.

Q. And if he sells it, he turns the entire purchase——

A. No, that is an error there. What I meant was, the entire purchase on the News is turned over to me, and the entire purchase on the Herald I turn over to the Examiner, but the profit on the Times, well, it is 2 cents to the Examiner man, and a cent and a half to myself. In other words, I get a cent and a half profit on the laydown of the Times.

Q. Do you make a laydown on the Times?

A. Yes, I have two laydowns.

Q. Where are those made?

A. The first laydown is Mullen & Bluett, now, since this change has been made recently here, and the other laydown is on the northwest corner at Swelldom. That is made with the Examiner, too.

Q. That is a store on the northwest corner?

A. That is a store, yes, sir.

Q. Those are your papers that you lay down on those corners? A. That is right.

Q. What profit do you get from those?

A. A cent and a half on the daily, and two cents on the Sunday. [1273]

(Testimony of John Francis Fields.)

Q. Then the Examiner hustler makes a two cent profit? A. That is right.

Q. We are talking about the daily?

A. That is right, the daily.

Q. Well, do you operate now at the Mullen & Bluett corner? A. No, I don't.

Q. Oh, you don't? Well, there——

A. I am on the Silverwood's side; that is, the northeast.

Q. The northeast. Is that the main spot?

A. Yes, sir.

Q. From whom do you buy the People's World?

A. I get the papers from the office.

Q. The office of the People's World?

A. The People's World.

Q. What do you pay for them?

A. One cent a copy.

Q. And is the general price five?

A. That is right.

Q. Do you keep the difference?

A. Yes.

Q. From whom did you used to get the Ham and Eggs?

A. It was delivered to the corner by some agent. I know the agent, but I can't recall the name.

Q. Was it a district man of the Times?

A. No. It was an agent from the Ham and Eggs direct. [1274]

Q. What is this Ham and Eggs paper that you mention?

(Testimony of John Francis Fields.)

A. Well, it mainly consisted of old age pension plan and gives different labor periodicals in it.

Q. What did you pay for that, Mr. Fields?

A. Three cents.

Q. And you would sell it for a nickel?

A. That is right.

Q. Retaining the difference?

A. That is right.

Q. The Socialist Call, do you still sell that?

A. Yes, sir.

Q. How do you get that?

A. Through the office of the Socialist Call.

Q. What do you pay for it?

A. Three cents.

Q. What do you sell it for? A. Five.

Q. How do you get the Jewish Forward?

A. I did originally—no, strike that. That is referring to another one.

I get that through the hustler at Fifth and Spring on the Herald.

Q. You get that from a Herald hustler?

A. That is right.

Q. Do you know the name of the hustler from whom you get [1275] them?

A. Yes. Harry Relis.

Q. Harry Relis, R-e-l-i-s?

A. That is right.

Q. That is the same man who was on the witness stand in connection with the Herald case?

A. That is right.

(Testimony of John Francis Fields.)

Q. What do you pay Mr. Relis for those?

A. Two cents a copy.

Q. And is that a nickel, too?

A. No, that is a three-cent paper.

Q. That is a three-cent paper.

Do you know what he pays for them?

A. No, I couldn't say.

Q. What do you do with your unsold copies on that?

A. Return them the next day—that is a daily.

Q. To Harry Relis?

A. That is right.

Q. With credit? A. That is right.

Q. Now, do you get the Jewish Voice from Harry Relis?

A. I do now. Originally I got them from the office.

Q. The office of the Jewish Voice?

A. That is right.

Q. And what do you pay for that? [1276]

A. Three cents.

Q. And does that sell for a nickel usually?

A. That is right. That is a weekly.

Q. Do you get returns? A. Yes.

Q. Do you know what Relis pays for them?

A. No, I don't.

Q. Do you know whether he pays a lesser sum for them than that at which he sells them to you?

A. I don't believe so.

Q. You don't know?

(Testimony of John Francis Fields.)

A. I couldn't say, no.

Q. You also sell the News?

A. That is right.

Q. Is that the Four Star?

A. No. I believe the earliest edition I get is the Six Star.

Q. And what time do you get that, usually?

A. Well, all the papers are turned over to me approximately at 7:00 o'clock by the Herald man—the Herald hustler.

Q. You get this News from the Herald hustler at about 6:00 P. M.?

A. That is the left-overs. In other words, for the day—for the day's sales.

Q. Oh, I see. I thought maybe you get an early morning edi- [1277] tion. A. No.

Q. That came out the night before?

A. No.

Q. Now, you make a profit on that News?

A. Yes.

Q. Of what?

A. A cent and a quarter.

Q. And you pay one and three-quarters cents?

A. That is right.

Q. To the News hustler, for it?

A. Yes.

Q. Do you know what he pays for it?

A. No, I don't.

Q. Now, do you make any profit on the Examiner? A. Yes. Two cents.

(Testimony of John Francis Fields.)

Q. Do you sell the Herald, the left-overs?

A. Yes.

Q. And do you make a profit on that?

A. No. That is—as I believe I stated before, that was an accommodation to the Examiner hustler, due to the fact that he handles the News for me, and I collect the profit.

Q. You made that arrangement yourself with the Examiner hustler?

A. That is right, yes. [1278]

Q. Do you sell any magazines?

A. Yes, I do.

Q. What ones, please? Post?

A. Well, I would like to say this in the statement: Until yesterday, I handled the Post, Look, Collier's and Liberty.

Q. Both Look, Collier's and Liberty?

A. That was until yesterday.

Q. And had you been handling those ever since you were on the corner?

A. Yes, I have.

Q. That is all the magazines you have ever handled? A. Correct.

Q. Since you have been on the Sixth and Broadway corner? A. Sixth and Broadway.

Q. Do you buy your Posts from Joe Woods?

A. No, I don't.

Q. Where do you get them?

A. The Herald man makes the arrangements just the same as he does with the News, leaves them over.

(Testimony of John Francis Fields.)

Q. Well, do you pay somebody for the Posts?

A. Yes, I pay the Herald man the following day.

Q. You get them on a Tuesday night?

A. That is right—a correction there. Wednesday night now. It is on Wednesday night.

Q. The Post is? [1279]

A. That is right.

Q. Does it come out on a Thursday now?

A. It is on Wednesday we get it, I mean. As far as I know, it always has been a Wednesday.

Q. You get the Post on Wednesday night?

A. Yes.

Q. And you pay for it on Thursday?

A. That is right.

Q. How much do you pay?

A. Three and a half cents.

Q. You pay that to the Herald man?

A. That is right.

Q. Is that a Herald hustler, or a Herald district man? A. Herald hustler.

Q. And you sell it for a nickel?

A. A nickel.

Q. How about Look?

A. I pay seven and a half cents. I make two and a half cents profit.

Q. You pay seven and a half, and you sell it for a dime? A. That is right.

Q. From whom do you purchase those?

A. The Herald hustler.

Q. And your Collier's?

(Testimony of John Francis Fields.)

A. Collier's I receive from Joe Woods on Thursday night. [1280]

Q. Do you pay him for them?

A. No, I don't.

Q. Do you pay him for them eventually?

A. I don't know. I am credited with t. m and I turn the receipts over to the Herald man on Friday. In other words, it is an arrangement understood that there will be ten Collier's left every Thursday night. For instance, we will say if I am left twenty nickel magazines—that is the way we class them; we don't class them separately—if I am left twenty nickel magazines on a Thursday, the full total would be thirty with the ten Collier's that is due Thursday night.

Q. Now, do you pay somebody for those?

A. Yes, I pay the Herald hustler.

Q. And what do you pay him?

A. Three and a half cents a copy. I make a cent and a half.

Q. Three and a half on the Collier's, and you sell it for a nickel? A. That is right.

Q. Does that same price arrangement prevail with reference to Liberty? A. That is right.

Q. You buy them for three and a half and sell it for five? A. That is right.

Q. I understand that until last night, at least, you have [1281] been selling all these magazines continuously? A. Yes.

Q. Since you started at Sixth and Broadway?

(Testimony of John Francis Fields.)

A. Yes.

Q. Do you recall again the evening that you first started selling at Beverly and Western? I believe you have testified that you were down to the concourse and talked to Bill Moore. A. Yes, sir.

Q. And were taken out to Beverly and Western?

A. Yes, sir.

Q. That was about September——

A. (Interrupting) September, I believe; somewhere in September, yes.

Q. September, 1938? A. Yes.

Q. How long did you talk with Mr. Moore on that particular evening?

A. Well, it was just a few minutes before we went to the corner, that I drove out to the corner.

Q. You drove out with Bill Moore, didn't you?

A. That is right.

Q. Did you talk to him on the way out, or at the concourse, or at both places?

A. At the concourse and also at the corner when I got out [1282] there. He gave me a reminder.

Q. About October or November, 1939, were you engaged in any other occupation than that of selling newspapers and periodicals?

A. No, I wasn't.

Q. You never had any other sort of job or calling for which you received compensation?

A. No.

Mr. Yoakum: That is all.

(Testimony of John Francis Fields.)

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Fields, approximately how many copies of all of these other publications other than the Times, and that includes magazines—— A. (Interrupting) Yes, sir.

Q. (Continuing) —do you on an average sell on a night?

Mr. Cosgrove: Are we now talking about Sixth and Broadway?

Mr. Mouritsen: Yes, Sixth and Broadway only.

The Witness: Well, it varies on each item. Would you want me to specify each item?

Q. (By Mr. Mouritsen) No. I mean group them all together, all these other publications other than the Times. I mean on an average, how many of those do you sell on a night?

Mr. Hall: You are referring to Sixth and Broadway, Mr. Mouritsen?

Mr. Mouritsen: Yes.

The Witness: Well, the total sale, I think, would be about [1283] thirty copies all together on everything I have.

Q. (By Mr. Mouritsen) That is, other than the Times? A. That is right.

Q. Now, how many copies of the Times do you sell there on a night?

A. Do I understand the question to be for the entire corner or for my side?

Q. Well, let's see. You have laydowns on two of the other corners, is that right?

(Testimony of John Francis Fields.)

A. That is right.

Q. Well, for the whole thing?

A. Between fifty and eighty, I should judge, so I would say about sixty-five average.

Q. And, Mr. Fields, has any one of these people who bring these other publications other than the Times ever furnished you with a change apron?

A. No.

Q. Have they ever furnished you with a rack?

A. No. Strike that out. Yes, that is a mistake there. I have been supplied with a rack.

Q. Do you call any of these other papers other than the Times? A. No, I don't.

Q. And do you carry any other paper other than the Times in your arms or hands? [1284]

A. Yes, the Examiner.

Q. And none of the other publications that you have enumerated, is that correct?

A. That is right.

Q. Now, did any of these people who bring these other publications ever tell you to check in others handling the same publication?

A. Yes. The People's World has instructed me. [1285]

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 1:30 o'clock P. M.

Mr. L. B. Binford: Mr. Mouritsen, you yesterday furnished me with a photograph, Board's Exhibit

(Testimony of John Francis Fields.)

Number 11 for identification, which discloses a picture of a rack in the right side of the picture, and of another rack in the left side of the picture, and a box of some type in between the two racks, and asked me for a stipulation that such photograph showed racks of the type and kind furnished by Stockholders Publishing Company to hustlers and newsboys.

We will stipulate that the two racks shown are more or less typical of the racks used and furnished by the Stockholders Publishing Company to the newsboys and hustlers, particularly with respect to the capacity, but they are of various designs, but in general they represent the type of rack used.

Mr. Mouritsen: I accept the stipulation, and I offer the photograph in evidence as Board's Exhibit Number 11. [1286]

Bd 11 for - admitted

NATIONAL LABOR RELATIONS BOARD

XXI-R-

CASE NO 927, etc.

EXHIBIT NO. 11

IN THE MA[illegible] Stockholders Publishing Co

DATE 6-20-40 Fields

DANIEL W. ROSS, OFFICER [illegible]

BY Frazier

(Testimony of John Francis Fields.)

Recross Examination

Q. (By Mr. Yoakum) Where are the magazines that you sell kept?

A. Well, I keep the majority myself, and I leave one of each copy with the Examiner man on the other side, the Mullen & Bluett side.

Q. Are they in all cases what you might call lay-downs? A. Yes, sir. [1287]

Q. Do you have any people that purchase the paper from you that you might call your regular customers?

A. Yes, I have two or three.

Q. Do you ever extend credit to them?

A. Yes, I have done that.

Q. Some night they might not have a nickel handy, or any change, and you collect the next night?

A. That is right.

Q. Do you do that on your own initiative?

A. That is right. [1288]

Cross Examination

Q. (By Mr. Compton) Mr. Fields, I believe you testified that you sold certain Jewish language newspapers? A. That is right.

Q. Will you state how often those newspapers are published?

A. The Forward is published daily, and the Jewish Voice is a weekly.

Q. From whom did you get those papers?

A. Herry Relis at Fifth and Spring.

(Testimony of John Francis Fields.)

Q. Did he bring them to your corner?

A. No, I got them from him at the corner.

Q. You went up to his corner to get them?

A. That is right.

Q. And do you do that each day?

A. That is right.

Q. What time of the day, generally?

A. Around 5:00 o'clock. [1289]

Q. 5:00 o'clock in the afternoon?

A. In the afternoon, yes.

Q. And do you pay him for those papers?

A. That is right.

Q. Do you know whether or not he is a wholesaler of those papers?

A. No, I don't believe he is. He gets them from some distributor. They are left with him every day.

Q. Did he ever on any occasion deliver those papers to you? A. No.

Q. Do you get returns on those papers?

A. Yes.

Q. How do you handle that?

A. They are returned every day; that is, I mean the following day.

Q. The following day?

A. That is right.

Q. And where do you make those returns?

A. To Fifth and Spring.

Q. And what time do you start selling newspapers?

A. Approximately between 6:10 and 6:30, anyway; somewhere around that.

(Testimony of John Francis Fields.)

Q. And what do you do, go to your corner first?

A. No. I report—I pass Fifth and Spring. I have to come [1290] that way and I get the papers first and go to Sixth and Olive and report.

Q. And where do you pick up your returns?

The Witness: No, I believe what I did state was that the papers are returned the next day to Fifth and Spring.

Q. (By Mr. Compton) That is what I am asking you. When do you do that?

A. At 5:00 o'clock the next day.

Q. And when do you get the return to return them to the corner of Fifth and Spring?

A. Well, the unsold copies that I have with me I take home.

Q. You take home? A. That is right.

Q. You carry them home the night before, and bring them down the next day?

A. That is right.

Q. (By Mr. Hall) These Examiners that you sell at the cor- [1291] ner of Sixth and Broadway, you bought from an Examiner newsboy on the opposite corner, as I understand you; is that correct?

A. That is right.

Q. So that the financial dealings that you have with respect to the Examiners occur between you and this other newsboy, and not between you and any district man representing the Examiner; is that right?

A. That is right.

Mr. Hall: That is all.

(Testimony of John Francis Fields.)

Cross Examination

Q. (By Mr. L. B. Binford) Mr. Fields, I understand you testified this morning that you sold certain copies of the News, left-over copies, as they are sometimes called?

A. That is right. The leftover copies for the day.

Q. And from whom do you procure those newspapers? A. The Herald newsboy.

Q. Do you pay him for them the following day?

A. That is right.

Q. You are credited the following day?

A. That is right.

Q. You are credited the following day?

A. Yes.

Q. You do not have any dealings with the District man for the News? [1292]

A. No, I do not.

Cross Examination

Q. (By Mr. Yoakum) If one of these customers to whom you sold a paper on credit did not pay you for it, you would be obliged to pay the wholesale price of that paper to the district man?

A. Yes, I would. Not the district man. To the Herald man.

Q. Oh. They are the Heralds that you sell on credit?

A. Well, no, I wouldn't take the responsibility on the Herald because, as I believe I stated this morning, I do not receive any commissions from the

(Testimony of John Francis Fields.)

Herald; it is only an accommodation due to the fact that the Herald man takes the News on the other side to accommodate me. But if I credit a News or a magazine, I am fully responsible; in other words, I will lose the profits if the customer does not pay.

Q. If you should credit the Los Angeles Times, would that same situation be true?

A. Yes, that would be true, too. And likewise on the Examiner.

Mr. Yoakum: Nothing further.

Cross Examination

Q. (By Mr. Compton) Just a moment.

Mr. Fields, you just testified concerning the Herald man; do you mean by that a Herald hustler?

A. That is right, yes. [1293]

Q. You do not have any contact with any Herald district men, do you? A. No, I don't.

Q. You do not have any business dealings with them whatsoever? A. No, I don't.

Cross Examination

Q. (By Mr. L. B. Binford) Do you make any profit on the sale of the News?

A. Yes, I do.

Q. And you pay the boy you get them from the wholesale price? A. Yes, sir.

Q. And you make whatever profit you make from the sale of them? A. That is right.

Q. And that is between you and the newsboy?

A. That is right. [1294]

Mr. Mouritsen: Mr. Examiner, I will offer in evidence as Board's Exhibit No. 14 an agreed statement of facts signed by counsel for the Times-Mirror Company, the representatives of the Union and by myself, and Regional Director, which agreed statement of facts has reference to the operations of the Company so far as the jurisdiction of the Board over the operations is concerned.

Trial Examiner Kennedy: Is there any objection?

Mr. Cosgrove: No objection. [1295]

Trial Examiner Kennedy: Received.

MAX ROBERT DYER

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Dyer? A. 660 Third Avenue, Los Angeles.

Q. What is your business or occupation? [1296]

A. Circulation department circulator.

Q. For what paper? A. Times-Mirror.

Q. How long have you held that position?

A. Since I was about 14—about 24 years.

Q. As I understand, you are now a morning district man or district manager?

A. Morning district man.

Q. For that paper? A. Yes, sir.

Q. How long have you held that position?

(Testimony of Max Robert Dyer.)

A. The same length of time.

Q. With reference to the last year or two, will you please explain what your duties are in that position?

A. I get down to the office about 4:00, press time starts about 4:30, and take the first edition, go to Sixth and Main and there are about five boys waiting for the paper there, and to Sixth and Spring, and Sixth and Broadway, and Seventh and Spring, and then I go down Sixth Street around Seventh, down Eighth, back to Twelfth, and then back to Sixth and Broadway and Sixth and Main. I have news stands in the morning, too. I stop at cigar stands, hotels.

Q. You also give papers to hustlers: is that correct? A. Yes, sir.

Q. Or to newsboys? [1297]

Mr. Yoakum: The reference to time was morning time? 4:30 a. m.?

The Witness: A. M., yes.

Q. (By Mr. Mouritsen) After you make that first round, what do you do next?

A. We go back to the office.

Q. And do you make subsequent deliveries?

A. Six o'clock. You mean between that time?

Q. No. After that first delivery, what is the next delivery that you make?

A. 6:00 o'clock.

Q. And do you follow much the same procedure that you have outlined? A. Yes.

(Testimony of Max Robert Dyer.)

Q. Do you count out the papers to a number of the boys at, I believe you said, Fifth and Spring?

A. Sixth and Main.

Q. Sixth and Main.

Do you do that on your second round, or do you go to the corners?

A. No; I go to the corner.

Q. Then after that time, do you return to the Times' plant?

A. After I get through with taking the hotels and news stands, I return to the Times' plant and stay until 8:00 o'clock for a replate, if we have one. [1298]

Q. If you have a replate what occurs?

A. We take out papers again to the corners.

Q. And on this occasion do you take them to all of the individual corners, or do you have a group who receive them at some specified corner?

A. No. Each individual corner.

Q. Is that the last delivery you made during the day? A. Yes, sir.

Q. Do you collect from the newsboys to whom you take papers?

A. We collect at Sixth and Main.

Q. At every morning? A. Yes, sir.

Q. Do all the newsboys come to that corner?

A. Yes, sir.

Q. How does it happen that they come to that corner rather than that you go around to the corners?

(Testimony of Max Robert Dyer.)

A. Well, they have been doing it for 35 or 40 years and another thing, if I went around to their corners in the traffic, they would be losing an hour or an hour and a half. It is just more speed for theirself.

Q. How long does it take you to make this last coverage of your district as a general rule?

A. I should judge 50 minutes.

Q. And that is made at approximately what time? [1299]

A. I should judge about 6:20, according to—just a case if he has got a little more for the second edition or not, but you know the deadline is supposed to be 6:00 o'clock. But he might be 10 minutes late.

Q. And at what time do these boys check in in the morning?

A. Some start about 9:15; the other up to 10:00 o'clock.

Q. And you remain on the corner of——

A. Sixth and Main.

Q. Sixth and Main.

All of that while they check in; is that correct?

A. Yes.

Q. About what time did you generally reach the corner for the purpose of checking the newsboys in?

A. About that time.

Q. In what area do you, as district man, operate?

A. From Sixth—I take in—well, we have a de-

(Testimony of Max Robert Dyer.)

livery boy taking the Fifth Street boys, and I check in them hustlers and then from Fifth to Twelfth, and then Broadway to Central.

Q. And approximately how many newsboys do you deliver papers to in that area?

A. I should judge 31 to 33.

Q. Do you have pretty much the same set of newsboys all the time, or is there a turnover in the——

A. Well, there is no turnover the last year and a half or [1300] two years, outside of maybe I should check one or two corners.

Q. And these men to whom you supply the papers, are they in general older, more mature men, or are they boys?

A. No boys at all; all old men; I should judge 50 up.

Q. Do you have an established order for the number of papers you receive on the first edition that you take out at about 4:30, I believe?

A. Yes, we have an established order. But on the second order I do not have an established order. According to what——

Q. On the first one, however, it is established?

A. Yes, sir.

Q. You make your rounds and put those papers out; is that correct? A. Yes.

Q. Do you put them all out or do you bring returns to the Times from that first order?

A. No.

(Testimony of Max Robert Dyer.)

Q. Is that order from time to time raised—you get a good headline or good news story?

A. Yes, sir.

Q. Who raises that order? A. I do.

Q. And it is your practice not to bring any papers back [1301] to the plant after the first round; is that correct? A. Yes, sir.

Q. When you order extra editions of the paper over and above your established order, how do you parcel those out; that is, the extra papers out to the newsboys? A. According to the headlines.

Q. I see.

According to what you think of how good the headline is; is that correct?

A. Yes, sir. We do not vary a hundred papers a day throughout the year unless there is something that is—something sensational, or something.

Q. Such as the outbreak of war, or something like that, is that correct? A. Yes, sir.

Q. And then you vary more than a hundred papers? A. Yes, sir.

Q. And on occasions such as that when you get a good headline you parcel those papers out to the newsboys; is that correct? A. Yes, sir.

Q. Now, at what price do you furnish the week-day copies of the Times to the newsboys within your district? A. Three cents.

Q. Is that a price established by the paper, by the [1302] Times?

A. Yes, sir, by the Times.

(Testimony of Max Robert Dyer.)

Q. And at what price do the newsboys sell the paper?

A. They sell it for five. They make a two-cent profit.

Q. And the five-cent price is also established by the paper? A. Yes, sir.

Q. Now, in the last year or two have you put any newsboys on any of the spots in your district?

A. There has been about two spots, Seventh and Los Angeles, there will be some hustler come down and ask if he can sell papers and I tell them how many they can sell down there, and then maybe the next morning he won't be back on account of the corner won't warrant it. Outside of that it has been very nearly 100 per cent the last year.

Q. On those occasions that you have put new boys on, have you told them where they are to check in in the mornings? A. Yes.

Q. And that is at Sixth and Main; is that correct? A. That is right.

Q. And have you told them where they are to receive the first editions of the paper?

A. No, because they will be at the spot and they will come up to ask you, that they want to sell at Sixth and Main. [1303]

Cross Examination

Q. (By Mr. Yoakum) You sell only the morning editions of the Times to the boys?

A. Yes, sir.

Q. You sell to about 33 boys?

(Testimony of Max Robert Dyer.)

A. Yes, sir. [1304]

Q. How many of the boys or hustlers congregate at Sixth and Main to receive the first edition?

A. I think around five.

Q. About five? A. Yes, sir.

Q. Do you tell them to congregate at that spot?

A. No; because it is the speed that is for them.

Mr. Mouritsen: I move to strike all of the answer after the word "no."

Mr. Cosgrove: No objection.

Mr. Yoakum: That may be stricken.

Q. (By Mr. Yoakum) The answer is you do not tell them to congregate at that spot? A. No.

Q. Do you know where the hustlers sell who congregate at that spot? [1305]

A. Yes, sir.

Q. Will you state their corners?

A. Sixth and Main, the P. E. Depot——

Q. The P. E. Depot, will you state where that is with reference to Sixth and Main?

A. That is south of Sixth and Main.

Q. About 100 yards?

A. Well, I should judge about a hundred yards.

Q. Not any more than a hundred yards?

A. And Sixth and Spring.

Q. Sixth and Spring?

A. And Sixth and Broadway.

Q. Sixth and Broadway?

A. And Seventh and Main.

Q. Seventh and Main. It is a fact, is it not, that

(Testimony of Max Robert Dyer.)

all of those corners which you have mentioned are within three blocks or less of Sixth and Main?

A. Yes, sir.

Q. Do you know why the hustlers come to Sixth and Main? Just answer yes or no. Do you know why they come there? A. Yes. [1306]

Q. (By Mr. Yoakum) I will ask you if it isn't a fact that they can get their papers earlier and be on their spot sooner by coming to that location than if they wait for you to deliver them to their various spots. [1307]

The Witness: Yes, sir.

Q. (By Mr. Yoakum) The men that wanted to have the papers left at their spot have them left there by you? A. Yes, sir.

Q. Do any of the hustlers pay in advance for the papers? A. No, sir.

Q. If they paid in advance for their papers, would there be any occasion for them coming to Sixth and Main at around 9:15 or 10:00 in the morning?

The Witness: No.

Q. (By Mr. Yoakum) The only reason they come there, in so far as you are concerned, is to pay for the papers you have let them have?

A. Yes, sir. [1308]

Q. After they have received some copies of the first [1309] edition, do you then go back over the territory to see if they want additional copies?

A. No.

(Testimony of Max Robert Dyer.)

Q. You don't? A. No.

Q. You go back to the concourse and get the second edition? A. Yes.

Q. Well, you ascertain before going back, do you not, how the first has been going?

A. Well, I know about how they will go because there is no sale of the first, because we hit the street at 6:30 and there is nobody on the street. Like when the stock market opens up a little earlier, I take more on the first.

Q. On the second edition you have a variable order?

A. Yes, according to what the news warrants.

Q. When you get down to a corner for making delivery of your second edition, does the hustler ever tell you how many he wants? A. Yes.

Q. Do you give him the number he requests?

A. Yes.

Q. Do you ever require him to take more than he asks for?

A. No, because I generally know what the spot will do.

Q. You mentioned in your previous testimony that frequently hustlers ask to operate at 7th and Los Angeles, and that you [1310] will tell them how many they can sell. A. Yes.

Q. Will you please state what you mean by the expression you will "tell them how many they can sell"?

A. I won't tell them but I give them the papers

(Testimony of Max Robert Dyer.)

—they only get five or six and the corner will never run out with that.

Q. Do you mean by that expression that you know approximately what the corner will do?

A. Yes.

Q. You don't mean by it that you are telling the hustler that he cannot sell any more than that number?

A. No. If he can sell four, there is no use giving him 50.

Q. But if he could sell 50, would you furnish them?

A. He would get 50, yes, sir.

Q. Do the hustlers pay you for all copies delivered to them except the ones they return?

A. Yes, sir.

Q. Do they pay you if they lose any copies?

A. No, sir.

Q. I beg your pardon? A. No, sir.

Q. If you deliver a hustler 10 copies of the Times and at the check-in hour he appears with no papers and tells you that he has lost them all, is he required to pay nothing? [1311]

Mr. Mouritsen: Just a minute. I object to that as already asked and answered.

Mr. Yoakum: Well, I submit we are certainly entitled to have an explanation of this answer of the witness to find out just—it was answered all right, but we want to find out if he understood the question and if I understood his answer. We may be talking about two different subjects here.

(Testimony of Max Robert Dyer.)

Mr. Cosgrove: Certainly no harm can come from making the matter clear. I am astonished that the Board's attorney would want to prevent the witness from making a matter clear. I think, myself, there is a misunderstanding here.

Mr. Mouritsen: I will withdraw the objection, Mr. Cosgrove.

Trial Examiner Kennedy: You may answer it.

Mr. Yoakum: Read the question.

(The question referred to was read by the reporter, as set forth above.)

The Witness: He pays for them. [1312]

Q. And I will ask you again, if he had lost copies must he pay you for them?

A. Yes, sure.

Q. If he has any stolen from him, is he obliged to pay you? A. Yes, sir.

Trial Examiner Kennedy: Have you had experience like that when they reported the papers lost or stolen?

The Witness: No, not in the morning. Just like I say, [1313] maybe there would be 48 in the bundle on account of the machine count or something.

Trial Examiner Kennedy: Then how do you get an answer to that question if you haven't had any experience as to it? It has never happened to you: is that right?

The Witness: Yes, sir.

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Dyer, I believe

(Testimony of Max Robert Dyer.)

you stated that the boys from Sixth and Main, the P. E. Depot, Sixth and Spring, Sixth and Broadway, and Seventh and Main, receive their first edition at Sixth and Main; is that correct?

A. Sixth and Main, yes, sir.

Q. Now, if those boys did not come to Sixth and Main it would be necessary for you to make five stops to deliver papers to those boys; isn't that correct? A. Yes, sir.

Mr. Yoakum: Now, just a minute. There is two of them right there, right at Sixth and Main. Pardon the interruption.

Q. (By Mr. Mouritsen). And that naturally would take more [1314] of your time to make five stops than it would to make one stop; isn't that correct? A. Yes.

Q. You couldn't make your rounds with the first edition so quickly if you had to make, say, four additional stops? A. No, sir.

Q. Now, if one of these boys did not come to Sixth and Main and pay you for the papers he had received, would you get somebody else to cover his spot?

A. No, sir, not if he showed up the next morning.

Q. Have you ever explained that to any of the boys who come to Sixth and Main?

A. About not showing up? We have only experienced two in the last year and a half that way.

Q. I see.

(Testimony of Max Robert Dyer.)

Well, let me ask you this: If a boy did not pay you for the papers that he had delivered to him, would you get somebody else to cover the spot?

A. I wouldn't sell him any more papers.

Q. Now, I believe you stated, Mr. Dyer, that your second order depended upon what the news warranted; is that correct? A. Yes.

Q. Now, who makes that determination of what the news warrants? [1315]

A. No. I thought you meant by me giving him the order. I determine the order from what it warrants myself.

Q. Oh, I see. You determine the amount of that second order? A. Yes, sir.

Q. Do you in making your delivery deliver all of this second edition to the boys on the corners?

A. Outside of Fifth Street.

Q. Outside of Fifth Street?

A. Yes, sir. [1317]

Q. You do not bring any back to the plant?

A. No.

Q. You put all of those papers out; is that it?

A. Yes, sir.

Q. Give them to the newsboys?

A. And stands.

Q. And stands? A. And hotels.

Q. And when you testify that Mr. Ryser determined the amount of that second order, you want to change that, or you misunderstood me?

(Testimony of Max Robert Dyer.)

A. I misunderstood you——

Q. You determine it?

A. I determine the order and give it to him.

Cross Examination

Q. (By Mr. Yoakum) Do you pay any money to any of the hustlers in your district?

A. No, sir.

Q. Do you pay them anything of value?

A. Nothing. [1318]

Q. On the second edition the papers are delivered to each of the corners, are they not?

A. Yes, sir.

Q. None are delivered to Sixth and Main except those for the boy at Sixth and Main in the P. E. Depot? A. Yes, sir.

Mr. Hall: Will it be stipulated that the testimony of Max Robert Dyer has no application to the Los Angeles Examiner case?

Mr. Mouritsen: It may be so stipulated.

Mr. Compton: The same stipulation for the Los Angeles Evening Herald and Express?

Mr. Mouritsen: So stipulated.

Mr. L. B. Binford: And the same stipulation for the Stockholders Publishing Company, the News?

Mr. Mouritsen: So stipulated. [1319]

ALBERT NATHAN

called as a witness on behalf of the Times-Mirror Company, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. And by whom are you employed?

A. The Los Angeles Times.

Q. In what capacity?

A. Editorial department, reporter, newspaper reporter.

Q. And have you had occasion during—how long have you been employed by the Times?

A. 28 years.

Q. Have you had occasion during the past several years to [1321] confer with the office of Cosgrove & O'Neil, and Hunsaker, Britt & Cosgrove, with reference to legal matters? A. Yes.

Q. And have you had some conference in connection with this hearing? A. Yes.

Q. You were present, I believe, in the court room and in attendance upon the hearing at the time that Mr. Marx testified? A. I was.

Q. And you have known Mr. Marx for some time? A. Yes.

Q. That is Mr. Ray Marx, Raymond F. Marx?

A. Yes.

Q. You were also here when Mr Cohen testified?

A. Yes.

Q. Were you here when I made a statement with reference to the preparation of a list of newsboys?

A. Yes.

(Testimony of Albert Nathan.)

Q. What, if anything, did you have to do with the preparation of the list, Mr. Nathan, and I will ask you to examine a copy of the list which at this time we would like to have marked Times Exhibit No. 6 for identification.

A. I was requested to have this list prepared, by your office. [1321]

Q. When?

A. Around the 1st of May, of this year.

Q. All right.

A. I transmitted that request to Mr. Ray Marx, circulation manager of the Los Angeles Times, and Mr. Jerry Cohen, and requested them to call a meeting of the district men, which was called. Forms were prepared. I addressed the district men and asked him to get the names of the boys to whom they sold papers.

Q. And to furnish that list to you?

A. And to furnish that list to Mr. Jerry Cohen, who in turn furnished it to Mr. Ray Marx, who in turn gave it to me, who in turn gave it to you.

Q. Now, did that request suggest that in addition to getting the names that they furnish you with the place or the location where the boys sell the Times? A. Yes, sir.

Q. Now, the papers that you turned over to my office were in the original handwriting of the district men? A. They were.

Q. And the typing, so far as you know, was done in my offices? A. Yes, sir.

(Testimony of Albert Nathan.)

Mr. Cosgrove: We will offer the list. I don't know whether you want it as a Board number or a Times number. [1322]

Trial Examiner Kennedy: Board's Exhibit No. 6 for identification. Any objection?

Mr. Cosgrove: That is Times' Exhibit No. 6 for identification.

Trial Examiner Kennedy: I am sorry. Times' Exhibit No. 6 for identification. Any objection?

Mr. Mouritsen: No objection.

Trial Examiner Kennedy: Received in evidence.

(Thereupon, the document referred to was received in evidence and marked Respondent Times' Exhibit No. 6.)

Trial Examiner Kennedy: Is that all, counsel?

Mr. Cosgrove: If I may have just a moment.

Trial Examiner Kennedy: Oh, pardon me.

Mr. Cosgrove: I think this ought to be disclosed for the record. This list, of course, was prepared by the district men. How many district men are there, do you remember?

A. Some 22, I believe, men, all together. I believe there is 12 or 14 districts. I have forgotten exactly.

Q. Now, this petition in this case is confined to the city of Los Angeles and Glendale, but are these district men confined in their operations to those two cities or do they take in outside territory?

A. They are not confined to those two districts. [1323]

(Testimony of Albert Nathan.)

Q. In other words, this list is a list of all the newsboys that sell the Los Angeles Times in these 22 or 23 districts, regardless of the territorial limitation of the cities of Glendale and Los Angeles?

A. That is correct. There are 22 or 23 district men, and I think 12 or 14 districts, and this comprises all of those.

Q. Do the districts stop when you hit the city limits, or do they lap over from one city to another?

A. In many cases they lap over. [1324]

Q. In the preparation of Times' Exhibit 6, it contains the names of all newsboys who sell the Times, I believe you testified——

A. It might be——

Mr. Cosgrove: May I make a statement there that may prevent some confusion? I think that there has been in my questions, and perhaps in the answers, a statement that warrants the question the attorney for the Board is now asking, but this list, of course, is only a list of the newsboys that are serviced by the district men.

Now, of course there are newsboys that work for these carriers, independent operators that sell the Times, and they are not involved in your case and they are not in this list. These are only hustlers, as we call them, fellows that deal with the district men and not the men that work for these independent operators that buy a large number of papers and have school boys deliver the papers on their routes. [1326]

(Testimony of Albert Nathan.)

Mr. Mouritsen: Yes. And the Times' Exhibit 6 does not contain any segregation as to boys who sell on week days or boys who sell on Sundays; is that correct—or, the Sunday editions of the paper?

Mr. Cosgrove: No. No. It is the boys who are serviced by the district men and if they sell three days a week or five days a week, or one day a week, they are listed. I thought that was what you wanted—the name of every boy? I guess that is what we have got. [1327]

Q. (By Mr. Cosgrove) In other words, from the information that we gathered, if the Board desired, or the Examiner desired to know whether any of these boys sold any other newspaper in addition to the Times, we could find it out from the report that the district managers gave us?

A. Assuming the boys told the truth.

Q. Well, of course, we have to rely on what the boy said for the name and the other information?

A. That is correct. [1329]

(The document referred to was received in evidence and marked Board's Exhibit No. 15.)

(Testimony of Albert Nathan.)

BOARD'S EXHIBIT No. 15

Los Angeles Newsboys—C.I.O.—Local Industrial Union No. 75

Secretary, Arthur Page
Room 304—Currier Building
212 W. 3rd St.—Los Angeles
Phone MUtual 5747
(Allied Printing Trades Council Label, No. 111)

June 29, 1939

Mr. Norman Chandler
Los Angeles Times
Los Angeles, California

Dear Sir:

You have refused to bargain with us.

The Newsboy's Union is requesting a meeting for the purposes of bargaining on our demands before 2 PM, Wednesday, July 5.

We shall be glad to meet with you for this purpose before that time. If you will not meet with our committee, we shall be forced to take such action as is necessary to protect our members.

Sincerely yours,
NEWSBOYS' L. I. UNION #75.
CIO

.....

ART PAGE, Sec.

RETURN RECEIPT

Received from the Postmaster the Registered or

(Testimony of Albert Nathan.)

Insured Article, the original number of which appears on the face of this Card.

MR. NORMAN CHANDLER
(Signature or name of addressee.)
By JAMES THOMAS
(Signature of Addressee's Agent.)

Date of delivery Jun 30, 1939.

Post Office Department—Official Business.

Registered Article—No. 210474 Insured Parcel.

No.....

Return to News Boys Local Industrial Union.
(Name of Sender)

Street and Number, or Post Office Box—212 W 3rd St Los Angeles, California.

ROY ELEY

recalled as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified further as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Eley, I believe you testified when you were on the stand on another occasion that you held at one time the position of acting secretary of the Newsboys Union.

A. That is right.

Q. And during what period was that?

A. From October 14, 1939, up until the first Sunday of January, 1940, either the 6th or the 7th. I can't remember the exact date.

(Testimony of Roy Eley.)

Q. Mr. Eley, have you ever held any—have you ever acted on any committees of the union?

A. On any committees?

Q. Yes. [1331] A. Yes.

Mr. Compton: Mr. Eley, will you please speak up so I can hear you?

The Witness: I will.

Q. (By Mr. Mouritsen) Will you please state on what committees of the union you have acted?

A. I have acted on the organizing committee and at the present time on the Labor Board Committee, and on several of the minor committees just for a couple of days or something, some special happening.

Q. As a member of the Labor Board Committee, have you made any investigation regarding the numbers of newsboys who sell the Los Angeles Times within the city limits of Los Angeles and Glendale, California? A. I have.

Q. Will you state what that investigation has consisted of?

A. That investigation has consisted of me riding around visiting every corner in the city of Los Angeles and Glendale where to the best of my knowledge newspapers are sold.

Q. And did the investigation include the boys who sold at night, sold the Times at night within those areas?

A. By that you mean newsboys?

Q. Newsboys. A. Yes. [1332]

Q. And did it include an investigation of the

(Testimony of Roy Eley.)

boys who sell in the earlier—in the morning hours?

A. It did.

Q. And within those areas?

A. Yes, sir.

Q. Now, can you tell us approximately how many newsboys there are selling the Los Angeles Times within the city limits of Los Angeles and Glendale, California, excluding temporary newsboys, casual newsboys, and newsboys who sell only Sunday copies of the Times?

Mr. Cosgrove: We object to the question on the ground that no proper foundation for it has been laid. I mean by that, among other things, that there is no disclosure by the testimony thus far of the manner in which he determined, or his ability to determine whether a boy is a temporary boy or a casual boy or selling only on Sundays.

Trial Examiner Kennedy: I will sustain the objection. [1333]

Mr. Cosgrove: I think the pleader is entitled to ask a witness a question, if the witness is otherwise qualified to answer, upon an assumption that a certain word means a certain thing, and if Mr. Mouritsen desires to ask a witness questions, how many newsboys in Los Angeles selling the Los Angeles Times, excluding casual newsboys, and assuming that "casual" means such and such and then and there stated, if the witness is otherwise qualified to answer the question, I think that it is quite proper practice.

At least, I have often seen it done, and I think

(Testimony of Roy Eley.)

for the consideration of all that if Mr. Mouritsen would prepare an exact statement of what he claims the word means, then ask his questions, ask the witness to assume it does mean that, if the witness is otherwise qualified I wouldn't think I would have a valid objection.

Trial Examiner Kennedy: Another possibility is an amendment of the petition to specify or to define the terms. That can be done if the petitioner wants to do so. So what is your pleasure, gentlemen? Do you want to go ahead and take testimony or what? [1345]

Friday, June 21, 1940.

Met, pursuant to adjournment, at 10:00 o'clock a. m. [1348]

Mr. Mouritsen: Mr. Examiner, in attempting to define the terms used in the appropriate unit set out in Board's Exhibit 1-P, with reference to the Times-Mirror Company, we encountered considerable difficulty and in order that the Union's position may be made more clear and definite with reference to the men who it claims are within the appropriate unit it desire to move to amend its amended petition; that is, Board's Exhibit 1-P, so that the appropriate unit claimed is set out as follows:

"All newsboys engaged in the street sale of the Los Angeles Times at established spots four or more hours per day, five or more days per week, within the city limits of Los Angeles and Glendale, Cali-

fornia, except temporary newsboys and the definition of an 'established spot' is that an established spot is a place where a newsboy has engaged in the street sale of the Los Angeles Times five or more days a week for a period of six consecutive months or more. The 'temporary newsboy' is defined as a newsboy who has engaged in the street sale of the Los Angeles Times at an established spot for 30 days or less."

Trial Examiner Kennedy: That is the complete statement of the amendment to the petition? [1350]

Mr. Mouritsen: Yes.

Trial Examiner Kennedy: Is there any objection. [1351]

Trial Examiner Kennedy: You do not oppose it?

Mr. Cosgrove: We do not oppose it. And I make that statement so that if our responses to requests for data are made haltingly and with some distressing or embarrassing delay in time that counsel will know we have not prepared for this petition as now proposed in the amendment, but have prepared for something that I think is exceedingly quite different. [1352]

Trial Examiner Kennedy: The question now arises in my mind whether or not an amendment can be made. Do you see any authority for it in the rules? I haven't been able to discover anything. It is distinctly provided in Section 5, I believe it is—no, Section 4 of Article III that motions to dismiss petitions and requests for withdrawals of petitions shall be referred to the Board for appropriate ac-

tion. Now, that is the closest I find in the rules to anything concerning amendments to petitions. I realize that I have already permitted amendments to these petitions and I am wondering if that is proper. [1353]

Trial Examiner Kennedy: Will the same result be accomplished by denominating your statement as a bill of particulars rather than an amendment to the petition?

Mr. Cosgrove: We wouldn't agree to that, Mr. Examiner. We don't oppose the amendment, but I think it is not a bill of particulars. I think it really is a substantial—has the Commissioner had the privilege of examining the proposed amendment, a copy of it? [1354]

Trial Examiner Kennedy: Well, the proposed amendment, so-called, does not expand the scope; it rather contracts it; it that correct?

Mr. Cosgrove: Yes, sir, that is correct. I think there is no doubt about that, Mr. Examiner.

Trial Examiner Kennedy: I am not going to receive the proposal as an amendment to the petition, and if I am wrong on that of course the Board can correct that ruling when it reviews this case. However, I will receive the proposal as a statement of particulars, a bill of particulars or a clarification [1359] of the position of the petitioner, and inasmuch as it is agreed that it is not an expansion of the petition but, rather, a contraction of it I cannot see that anyone is to be prejudiced.

Mr. Binford: Mr. Mouritsen, early in these pro-

ceedings there was a stipulation entered into between you and the Stockholders Publishing Company respecting the second amended petition. Subsequent thereto a further amendment was made by the Union to the second amended petition by which the words "main spot newsboy" were stricken from the petition. May I now ask if it is understood, and if you will stipulate that all motions and answers and all objections and stipulations entered into in the proceedings with the Stockholders Publishing Company and the Board and yourself shall be deemed to apply and be applicable to the second amended petition as amended?

Mr. Mouritsen: That may be so stipulated.

Mr. Compton: May we have that same stipulation, Mr. Mouritsen?

Mr. Mouritsen: With reference to the Evening Herald and Express, yes.

Mr. Cosgrove: Through the Examiner may I ask counsel for the Board, in the light of the Examiner's ruling——

Trial Examiner Kennedy: Proceed.

Mr. Cosgrove (continuing): ——if it will be stipulated [1360] that the purpose of the statement which the Examiner has received is to limit and narrow the issue as presented by the amended petition?

Mr. Mouritsen: Yes, that may be so stipulated.

Mr. Hall: What number will this be given, Mr. Mouritsen, this paper that has been handed to us?

Mr. Yoakum: It was read in.

Mr. Hall: Oh, it was read into the record.

the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and further testified as follows:

Direct Examination (Continued)

Q. (By Mr. Mouritsen) Mr. Eley, how long have you been a member of the Newsboys Union?

A. Since February of 1939.

Q. And since that time have you attended the general membership meetings of the Union?

A. Yes, sir.

Q. Have you attended all of them?

A. All with the exception of one, I think. [1361]

Q. (By Mr. Mouritsen) From time to time while you have been a member have there been any meetings of what might be termed the Times unit within the Union?

The Witness: Yes. [1362]

Q. (By Mr. Mouritsen) Well, Mr. Eley, have you attended any meetings of the union—not general membership meetings—at which newsboys who handle the Times were primarily present? [1364]

A. Yes.

Q. And have you attended a number of such meetings? A. Yes.

Q. Approximately how many during the period that you have been a member of the Union?

A. Well, that would be—starting from February would be, let's see, February, March, April, May,

(Testimony of Roy Eley.)

June—five—twelve—I would say approximately sixteen or seventeen.

Q. And have you observed the characteristics of the men present who handle the Times?

A. Yes.

Q. Have you discussed with them the times that they have handled the Times?

A. I didn't understand that.

Trial Examiner Kennedy: Read the question.

(The question referred to was read by the Reporter as set forth above.)

The Witness: Yes, sir.

Q. (By Mr. Mouritsen) And other matters respecting their operations with the Times?

A. Yes, sir. [1365]

Q. (By Mr. Mouritsen) What in general are the ages of these men who handle the street sales of the Times? [1366]

The Witness: Well, I would say that they are of mature age, all mature men, that is, men who had reached their majority or better. [1367]

Mr. Mouritsen: Well, Mr. Examiner, just to be certain, that this matter has been covered, I will offer to prove through this witness, and would prove if permitted by the Examiner, that the men claimed to be within the appropriate unit are men of mature age and do not include but with few exceptions younger boys or school boys.

Mr. Cosgrove: Well, we will stipulate you have already proved it. [1371]

(Testimony of Roy Eley.)

Q. Now, can you tell us whether or not, Mr. Eley, the men who are claimed to be within the—the newsboys who are claimed to be within the appropriate unit are dependent upon their handling of the Times for their livelihood?

The Witness: Yes. [1372]

Mr. Hall: Will you stipulate that the testimony of Mr. Roy Eley given during his last appearance on the stand has no application to the Los Angeles Examiner case? [1386]

Mr. Mouritsen: That may be so stipulated.

Mr. Compton: The same stipulation with reference to the Los Angeles Evening Herald and Express?

Mr. Mouritsen: It may be so stipulated.

Mr. Binford: And the Stockholders Publishing Company, Inc.?

Mr. Mouritsen: That may be so stipulated. [1387]

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 2:30 o'clock p. m.)

ROY ELEY

recalled as a witness by and on behalf of the National Labor Relations Board having been first duly sworn, was examined and testified as follows:

Direct Examination

(Continued)

Q. (By Mr. Mouritsen) Have you ever held a

(Testimony of Roy Eley.)

—have you ever acted on the Organizing Committee of the Newsboys Union? A. I have.

Q. And when did you first start to act on the Organizing Committee?

A. The fore part of August, 1939. I believe the appointment was made the first Sunday in August.

Q. Did you hold any position on the Committee other than committee member?

A. After the committee was set up, I was made chairman of that committee.

Q. And how long did you continue to act as chairman of that committee?

A. Well, I acted through until the forepart of January, 1940. [1389]

Q. Now, while you were chairman of that committee, do you know of any efforts made by that committee to organize Times newsboys other than in the cities of Los Angeles and Glendale, California? A. None.

Q. (By Mr. Mouritsen) And were any attempts made by the Union, other than the Organizing Committee, to organize the Times newsboys other than in those districts? A. No.

Q. Do you know who undertook the organization work in Glendale? A. Yes.

Q. Who did? A. I did. [1390]

Q. (By Mr. Mouritsen) Now, what work did you do with reference to this organization work?

A. Well, I of course was, you might say, personally acquainted with all or practically all of the

(Testimony of Roy Eley.)

hustlers working [1391] in Glendale, through personal contact, especially of the Times, and whenever the opportunity presented itself, why, I talked unionism to those different members and asked them to join our organization.

Mr. Hall: Will it be stipulated that the testimony of Roy Eley during his last appearance upon the stand has no relation to the Los Angeles Examiner case?

Mr. Mouritsen: It may be so stipulated.

Mr. Compton: The same stipulation with the Los Angeles Evening Herald and Express, Mr. Mouritsen?

Mr. Mouritsen: It may be so stipulated.

Mr. Binford: And as to the Stockholders Publishing Company, Inc., Mr. Mouritsen?

Mr. Mouritsen: That may be so stipulated. [1392]

In the meantime perhaps we could proceed with another matter, and that is that the Union has a number of authorization cards that it is prepared to exhibit to the Examiner with reference to its claims to represent these newsboys.

Trial Examiner Kennedy: Are those cards the same ones that have been used before?

Mr. Mouritsen: No, sir, Mr. Examiner.

Trial Examiner Kennedy: A different group?

Mr. Mouritsen: These are authorizations from Times newsboys. [1393]

Trial Examiner Kennedy: Very well. I have been handed a group of cards reading as follows: "Card of authorization. Date, blank. I hereby designated and select the Newsboys L. I. Union No. 75 C.I.O. to represent me for purposes of collective bargaining with respect to rates of pay, wages, commissions, pensions, hours of [1396] employment and other conditions of employment." Blank for signature; blank for address. "I sell papers for: blank and blank. I understand that the above information is to be used in connection with Labor Board cases."

I will now proceed to compare the signatures on these cards with Times Exhibit 6.

EDWARD PATCH

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination
(Continued)

Q. (By Mr. Mouritsen) Mr. Patch, are you a Times newsboy? A. I am.

Q. Where do you operate? [1397]

A. In front of the Biltmore Hotel.

Q. How long have you operated at that spot?

A. About five to six years. [1398]

Q. (By Mr. Mouritsen) Mr. Patch, will you explain the manner in which you operated in 1935 on this spot?

(Testimony of Edward Patch.)

A. Well, I was standing in front of the Biltmore, selling papers the same way I am today, since 1935.

Q. (By Mr. Mouritsen) And in 1935 did you receive your papers from the Times district man?

A. I did.

Q. Did you remain on that corner a certain number of hours per day?

A. I did. [1404]

Q. And at the present time do you remain on the corner approximately those same hours?

A. Well, I come to work a little earlier now than I did in 1935.

Q. And other than your coming to work a little earlier have there been any other changes in the manner in which you operated in 1935 and the manner in which you operate at present?

A. Not a bit.

Q. Now, in 1935 did you or did you not receive a check from the Times for selling newspapers?

A. I received a bonus check, what they call.

Q. (By Mr. Mouritsen) About when did you commence to receive that check, Mr. Patch?

A. When I first started to work for the Times.

Q. And when was that, approximately? [1405]

A. About 1934, in about April or May—April or May.

Q. And did you start to receive the check at or about that time? A. I did.

Q. Did you have any conversation with anyone regarding that check?

(Testimony of Edward Patch.)

A. Not until I started working.

Q. Well, about when did you have a conversation regarding that check?

A. 1934.

Q. Can you fix it more specifically than that during the [1406] year 1934?

The Witness: I did. I think I said in April, 1934.

Q. And do you recall the name of the district man with whom you talked?

A. Yes. Lee Morrow.

Q. Now, would you state what Mr. Morrow said to you and what you said to Mr. Morrow?

A. Well, I was standing in front of the Pacific —I mean the Subway Terminal Building. He asked me if I wanted to go to work. He said he seen me around a couple of times and I said, "Where?" Well, he told me where it was. He says I would find ten papers lying down there and I would get a 50-cent check per day.

Q. Did he say anything further at that time, do you recall? A. No.

Q. And did you go to work at the spot he designated? A. I did. [1407]

Q. And did you do anything at that spot other than sell the papers?

A. I didn't do anything else.

Q. And what papers were those?

A. Los Angeles Times.

Q. And after that time did you receive the 50

(Testimony of Edward Patch.)

cents per night that he had indicated you would receive? A. I did.

Q. And how did you receive that?

A. In a pay check.

Q. How often? A. Every week.

Q. Prior to that time did you receive another or different spot? A. I did.

Q. And what spot was that?

A. Seventh and Broadway.

Q. How long did you remain there?

A. About five or six months, more or less.

Q. During the period you were on Seventh and Broadway did you receive a check? [1408]

A. I did.

Q. And it was in what amount?

A. Around $7.00—seven and a quarter, ten and a quarter.

Q. (By Mr. Mouritsen) Well, I mean for what period of time would the $7.00 to $10.00 be?

A. It all depended on the amount of papers I sold, and so I couldn't tell you.

Q. Did you receive these checks from the Times?

A. I did.

Q. Were you transferred to another spot after that? A. I was.

Q. To what spot?

A. The Biltmore Hotel.

Q. And approximately when?

A. In 1934—no, in 1935—1935, I think it was—1935; close to September.

(Testimony of Edward Patch.)

Q. And during that period while you were on the Biltmore spot in 1935 did you receive a check?

A. I did.

Q. From the Times? A. I did. [1409]

Q. Did you do anything other than sell papers for that check? A. No.

Q. Did you receive a check during the year 1936 from the Times?

A. No, I don't recall.

Q. Did you ask that the check be discontinued?

A. I didn't.

Q. Who discontinued paying the check, if you know? A. The Los Angeles Times.

Mr. Mouritsen: You may inquire.

Mr. Cosgrove: For the purpose of the record, Mr. Examiner, at this time we will move to strike out all of the testimony of the witness Edward Patch relating to the payment to him in the year 1935 of checks by the Los Angeles Times; and if there is testimony that he received checks in 1934 the motion would go to that matter also.

Trial Examiner Kennedy: Motion denied.

Cross Examination

Q. (By Mr. Cosgrove) Now, Mr. Patch, you did not receive any checks in 1936, did you?

A. I don't think I did.

Q. Do you think that the first checks you received were in 1934? A. Yes. [1410]

Q. I understood that you commenced the sale of the Times in front of the Biltmore?

(Testimony of Edward Patch.)

A. No.

Q. Where did it start?

A. Seventh and Grand.

Q. And the amounts of the checks to start were $3.00 a week.

A. 50 cents per day.

Q. You got a check each day?

A. No. One check a week. I didn't say the amount of the check was $3.00. The amount was $3.50.

Q. Yes. But the form of the check; it was a check of the [1411] Times Mirror Company?

A. That is right.

Q. And it was payable to your order?

A. Yes, sir.

Q. You say the amount of the check, though, varied? A. That is right.

Q. And the amount of the check depended upon the number of papers that you sold?

A. That is right.

Q. What was the ratio between the amount of the check and the number of papers that you sold—let me ask that again in a different form. Do you know what the allowance was for each paper sold that went into the total amount of the check?

A. 10 papers.

Q. What? A. 10 papers.

Q. The answer is 10 papers?

A. For that 50-cent check, yes.

Q. Now, supposing that you sold 10 papers, on

(Testimony of Edward Patch.)

Monday night you would get a 50-cent check for that, would you? A. Yes.

Q. Now let us assume that you only sold five papers; how much of a check would you get? [1412]

A. I don't know; there was no allowance—I don't know of any allowance for five papers.

Q. If you sold 50 papers in the night, what would be the amount of the check?

A. Well, there was supposed to be—I was getting $10.50 per week.

Q. I am talking about selling 50 papers in a night. A. That is right.

Q. For those 50 papers you would get $10.50?

A. Ten per week.

Q. I am not asking you now if you sold 50 papers every night, but just 50 papers one night.

A. Yes.

Q. Then the next night you might sell more and you might sell less? A. That's right.

Q. How much would you be allowed for selling the 50 papers? A. I couldn't tell you.

Q. Did you know when you received your check how much it would be before you looked at it?

A. No, I don't think I would without turning the money for them 50 papers in to the company. If I turned in the money for the 50 papers, I would know what my check would be. [1413]

Q. During this time in 1934-1935, when you received these checks each week, did you pay the district man for the papers that he delivered to you? A. Every night.

(Testimony of Edward Patch.)

Q. You paid him every night? A. Yes.

Q. How much did you pay him, Mr. Patch? How much per paper?

A. Per paper, 3 cents.

Q. You paid 3 cents?

A. That is right.

Q. And how much did you sell it for?

A. A nickel. [1416]

Q. Now, that was on the daily. And what about the Sunday paper?

A. I paid him 5 cents.

Q. And you sold it for how much? Sir? You sold it for 10 cents, didn't you?

A. That is right. Sold it for 10 cents. I was——

Q. (Interrupting) Now, then, on the daily paper, this 2 cents represented by the difference between what you paid for it and what you sold it for, did you retain that 2 cents?

A. I did.

Q. And the 5 cents which represented the difference between the nickel that you paid for the paper and the dime that you got for it when you sold it, you kept that nickel?

A. I did.

Q. You paid the district man every night for the papers that he delivered to you that day?

A. I did.

Q. Don't you remember, Mr. Patch, that during this time when you got those checks that you paid 7½ cents for the Sunday paper?

(Testimony of Edward Patch.)

A. I paid—you're right; you're right.

Q. And the 2½ cents you kept?

A. That's right.

Trial Examiner Kennedy: Speak your answers, please.

The Witness: That's right. [1417]

Q. (By Mr. Cosgrove) Now, in 1936 you received no check. So sometime at the end of 1935 you stopped receiving checks?

A. Yes, sir.

Q. And do you remember whether or not at that time you were asked whether or not it would be agreeable to stop paying you by check?

A. No, I was not asked.

Q. Nothing was said to you at all, was there?

A. Not a thing.

Q. The Times just stopped paying you these checks? A. Yes.

Q. Or delivering these checks to you?

A. That is right.

Q. And that was late in 1935, was it?

A. Yes.

Q. September or October?

A. I couldn't say. It was the later part of 1935.

Q. The later part of 1935? A. Yes.

Q. And since that time you have received no checks from them? A. That is right.

Q. And since that time all you have received from them, from the Times, is the papers and the profit that you would get in the sale of the papers?

(Testimony of Edward Patch.)

A. Yes, that is right. [1418]

Q. Do you remember, was there a change made in 1936 in the price of the Sunday paper to you?

A. There was.

Q. And what was that change?

A. The difference between two and one-half cents and a nickel.

Q. Well, you mean by that, prior to that time they had been charging you seven and a half cents?

A. That is right.

Q. And thereafter they started charging you five cents? A. Yes.

Q. Well, now, then again here a year or two ago they raised the price of the Sunday paper to six cents, didn't they?

A. They did, yes.

Q. And they raised the price of the daily paper to you, did they or did they not?

A. They did.

Q. So that in 1935, let us say, you paid a certain price for the papers? A. Yes.

Q. And then in 1936 they changed that price?

A. Yes.

Q. And then again in 1939 they again changed the price? A. About that time, yes.

Mr. Cosgrove: Mr. Yoakum would like to ask the witness [1419] a couple of questions.

Cross Examination

Q. (By Mr. Yoakum) Mr. Patch, do you know

(Testimony of Edward Patch.)

what is meant in newspaper circles by the term "dumping papers"?

A. If you say "dumping papers," no. I never heard the expression used.

Q. Do you recall testifying a few minutes ago that at the time you received the so-called bonus that you would sometimes hold out some papers so that you would apparently have sold 35?

A. I did.

Q. I will ask you if you will just explain to the Examiner what you meant by that. It wasn't clear to me.

A. Well, we will start with ten papers. I got on the corner and they gave me ten papers down there, and he says—well, I am supposed to hustle them, and I sold seven or eight copies of them and naturally I read one paper, so I would give the other one away.

Q. You would give the other one away to make up the ten? A. That is right.

Q. Now, if you had sold, let us say, 30 papers and you had five left what would you do with them?

A. Well, I would take them home, take one home with me, give the newsboy one, just give them away.

Q. You would do away with them? [1420]

A. That is right.

Q. But you would pay for the entire 35?

A. I did.

(Testimony of Edward Patch.)

Q. And then you would get a larger bonus, as you call it? A. That is right.

Q. Now, I will ask you did you continue that practice after this so-called bonus was eliminated?

A. Kept papers?

Q. Yes. A. I have.

Q. How many do you keep?

A. Anywhere from two, three, that I wouldn't sell.

Q. Did you pay for them? A. I did.

Q. What did you do with them?

A. Well, I keep one—I give one to the street car conductor when I get on the street car; I take one home with me and then maybe the landlady reads one, too.

Q. But you don't just eliminate them like you used to?

A. No, not what you would call eliminate them, because generally if I sold 31 or 32 papers I would give the newsboy one and then I would take one and another fellow would take one. That wouldn't be eliminating them.

Q. But under the old system, when you got your so-called bonus, you would eliminate them to build up a bonus? [1421] A. No.

Q. Didn't you just testify a few minutes ago you did that very thing?

A. Eliminate three papers, if that is what you mean, yes.

Q. What did you mean previously when I asked

(Testimony of Edward Patch.)

you about eliminating papers so as to build up to the 35?

A. Just what I says here, I would take one home, give one to the landlady, and the street car conductor. That would be eliminating those three papers, to build up to 35.

Q. You could have turned those odd papers in for credit under the old system?

A. Yes, if I didn't want them.

Q. Then your bonus would have been smaller?

A. Well, if I just paid for 34 papers, naturally my bonus would be for either 30 or 25 papers. That is just natural.

Q. You first sold at Seventh and Grand, if I recall correctly?

A. That is right, on the Times.

Q. Now, what other papers did you sell?

A. Not any.

Q. How long did you stay at Seventh and Grand? A. Maybe—close to a month.

Q. And then you went to Seventh and Broadway and stayed there for five or six months?

A. That is right.

Q. Now, what other papers did you sell at Seventh and [1422] Broadway?

A. Not any.

Q. And after that, about September, 1935, you went to the Biltmore? A. That is right.

Q. And you have sold there ever since?

A. That is right.

(Testimony of Edward Patch.)

Q. Now, what papers do you sell there?

A. Just the Times.

Q. You don't sell any Examiners?

A. I don't sell any other paper or publication.

Q. Do you carry the Examiner?

A. I don't carry no Examiners.

Q. Is there an Examiner hustler there?

A. There is.

Q. Does he carry the Times?

A. He does not carry the Times.

Q. Not one copy? A. Not one copy.

Q. What do you do if someone asks you for an Examiner?

A. Well, if he is not there, I will pick it up and sell it to the man.

Q. You sell it? A. That is right.

Q. Then you wish to correct your statement that you do not [1423] sell the Examiner?

A. I do not sell the Examiner.

Q. Well, if somebody asks you for an Examiner and the Examiner man is not there, you hand him an Examiner? A. I have to.

Q. Why do you have to hand him an Examiner?

A. Well, the principle of a newsboy is to handle—to help the Examiner man out if he is not there, and to take care of his papers so they don't steal them. I wouldn't want somebody to walk away with my paper without paying me. If the Examiner is there, naturally he is going to pay me a nickel for my papers.

(Testimony of Edward Patch.)

Q. Then when you hand the Examiner to the customer he gives you a nickel for it?

A. Absolutely.

Redirect Examination

Q. (By Mr. Mouritsen) What do you do with the nickel that you get when you pick up an Examiner and give it to the customer?

A. Give it to the Examiner man. [1424]

Mr. Cosgrove: Before we take the recess, if the Examiner please, the Los Angeles Times will renew their motion to strike from the record all of the testimony of the witness Edward Patch dealing with or relating to the receipt by him of checks during the years 1934 and 1935, on the ground that it has no tendency to establish the relationship between the newsboys and the Los Angeles Times at the present time, and that it is irrelevant to any issue presented by the petitions and any pleadings filed by the defendant, or company, the Times Mirror Company, and that it relates to a period of time too remote to the present time to indicate the present status.

Trial Examiner Kennedy: Have you anything to say on that, Mr. Mouritsen?

Mr. Mouritsen: I think that I would oppose the granting of the motion, Mr. Examiner. I think that it has bearing upon that relationship as it exists at the present time.

Trial Examiner Kennedy: Well, I am going to

deny the motion, but I want to observe that I would get from the testimony an indication that the witness is not an employee [1425] at the present time. It would seem to me that it tends to show that if he were in that category in 1935, or closer to it in 1935, he is farther away from it at the present time. So I think that any evidence that came in under that testimony would tend to establish the company's case rather than the union's case. That is the way I view it. If you want it in the record, it will stay in.

Mr. Mouritsen: After all, Mr. Examiner, this is a factual inquiry——

Trial Examiner Kennedy (Interrupting): I think it is prejudicial to the Union's case. That is what I think.

JOHN FRANCIS FIELDS

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified as follows:

Mr. Hall: Will it be stipulated that the testimony of Edward Patch has no relation to the Los Angeles Examiner case?

Mr. Mouritsen: It may be so stipulated. [1426]

Mr. Compton: The same stipulation with reference to the Los Angeles Evening Herald and Express?

Mr. Mouritsen: So Stipulated.

(Testimony of John Francis Fields.)

Mr. Binford: And for the Stockholders Publishing Company?

Mr. Mouritsen: So stipulated.

Direct Examination

Q. (By Mr. Mouritsen) Mr. Fields, where do you sell the Times at present?

A. At Sixth and Broadway, on the northeast corner.

Q. Have you ever been removed from that spot?

A. Yes.

Q. And about when was that?

A. About February 29, 1940.

Q. Prior to the time when you were removed, did you have a conversation with any district man of the Times regarding your removal? A. No, sir.

Q. Did you have a conversation with anyone connected with the Times in any way?

A. Well, yes, I did.

Q. With whom?

A. With Huey Campbell, the district man, the following day; that is, I was not notified on the date of removal, and I contacted the district man the following day and got the [1427] information.

Q. Will you state what Mr. Campbell said to you and what you said to Mr. Campbell?

A. Well, I went through the regular procedure to get my papers, and Huey called me over and he said, "Fields, your spot has been consolidated." I said, "Yes?" I said, "How do you mean by consolidated?" He say, "Well, the corner doesn't rate two men,

(Testimony of John Francis Fields.)

and," he said, "we have decided to make it an extra laydown with the Examiner."

So I immediately inquired, and I said, "Well, what does that mean? Am I through?" "Well, no," he said, "you come down to the concourse tomorrow, and we will see what we have got for you to do."

And I said, "What about tonight?" He says, "Well, I'm sorry; I haven't got anything for you tonight, but see me tomorrow anyway."

Q. Was that about the end of the conversation?

A. Well, let me see. Yes, it was, at that time. [1428]

Q. Did you return to the corner after that time?

A. Yes, I did.

Q. And did you have a conversation there with any district man or with anyone else connected with the Times?

A. Yes, I did, later on in the evening.

Q. And with whom did you have such a conversation?

A. Juey Campbell and, finally, Jerry Cohen.

Q. Will you state what was said by you or by anyone else present on that occasion?

A. Well, as near as possible, I asked Huey how it was that the corner was consolidated and I was not notified. That was [1430] the first thing in the conversation. And he said, "Well, I don't think it was necessary. The corner does not rate two men, and I told you that you would get work the following day if you came to the concourse." I said, "Well, how about

(Testimony of John Francis Fields.)

the situation across the street on the main spot?" I said, "There is a new man working over there, and I have been working here about nine to ten months and I don't recollect being asked about the main spot." So then it led into where there was a few accusations brought up about not being on the corner and——

Q. (Interrupting) Who brought those up?

A. Huey Campbell.

Mr. Cosgrove: What did he say? What did he say?

The Witness: He said that "You were tardy and not on the corner most of the time," and that he had given specific instructions to get the papers at a certain place, and for the time it was not done. And he said that he couldn't see where it warranted the holding on of a job. So, after that conversation was over, why, Gene Alley injected the question and said that, "Well, the situation has been going on for a period of months and the thing was not remedied until today. I want to know the reason," he said, "of it all. And the fellow has been working there for a period of nine months, and I should think he has shown his reliability; he has always been at the corner and always paid the bills." That [1431] was about the substance of the conversation.

Q. Well, then, did Mr. Cohen come after that time? A. He was there at the time.

Q. Well, did he say anything during this conversation?

(Testimony of John Francis Fields.)

A. Well, he just wanted to know exactly what the trouble was there and why we couldn't get along.

Q. And did he say anything?

A. Yes, but I don't believe I remember the exact words.

Q. Well, just tell us in general the substance of it.

A. That he had had reports about the tardiness and being off the corner and wanted to know why I couldn't do a better job of it.

Q. And what did you say, if anything?

A. I told him that I had been working extra in the daytime at the time and that it might have made me 15 or 20 minutes late, and that I had made an arrangement with Huey Campbell to be at the corner at the approximate time, in preference to Sixth and Olive, and that was agreed to a certain length of time, and then the discussion came up again.

Q. Now, do you recall anything further that was said by anyone at that conversation?

A. Well, I believe the remainder of the conversation by Jerry Cohen was that after all we don't require ten hustlers to report to Sixth and Olive to catch the sheets; something to that effect. He said if the main spot shows every day, [1432] he says that is the requirement, and at that particular time I was the off spot. He says if he gets to the corner on time and represents the paper where he is supposed to sell it, that is satisfactory.

Q. Is that about all that you can recall?

A. That is about all.

(Testimony of John Francis Fields.)

Q. Well, did you then go back and operate on the corner after that time?

A. Yes. If I could inject a previous action in that, I had ignored the order to not report on the corner. I had gone to work previously to that, but I waited until Jerry Cohen came to iron out the situation. I was refused papers in the meantime until he got there. [1433]

Q. And you remained on the corner?

A. I remained on the corner.

Recross Examination

Q. (By Mr. Yoakum) I didn't get the approximate date that this controversy occurred.

Mr. Cosgrove: February 29, leap year.

Q. Of this year? A. Yes.

Q. That is the date that you say Huey Campbell didn't sell you any papers?

A. That is right.

Q. Now, on that particular evening did you sell any Times on that corner? A. Yes, I did.

Q. You did sell them? A. Yes, sir.

Q. From where did you get them?

A. Well, I went and reported to my regular corner and picked up the papers on the corner. There was a lay-down made there and I started to hustling papers until Jerry Cohen and Huey came down to iron out the situation. [1434]

Q. Jerry Cohen came down the same evening of the earlier conversation with Huey Campbell?

A. That is right.

(Testimony of John Francis Fields.)

Q. And you were there selling?

A. That is right.

Q. If I didn't misunderstand you, you testified this afternoon on direct examination that you were removed from the spot on February 29?

A. Well, I believe that is a technical point. I wasn't removed; I was notified I wasn't working, not removed.

Q. And you sold there that night?

A. Well, that was after I was given that notice. I reported to work and was told there was no work.

Q. But you got papers?

A. I got papers.

Q. And sold on the corner that night?

A. That is right.

Q. And I suppose you sold those other periodicals that you stated yesterday you handled?

A. No. At that particular time I did not.

Q. Well, were you handling them then?

A. I *will* handling them, yes, but due to the controversy there the Examiner man had them turned over to him.

Q. All those papers that you enumerated yesterday were turned over to the Examiner man that evening? [1435]

A. That particular evening, yes.

Q. Who turned them over to him?

A. The Herald man. The Herald man was there just before I saw Jerry Cohen.

Q. Now, do you recall what time of the evening it was that Jerry Cohen came down to the corner?

(Testimony of John Francis Fields.)

A. Well, approximately about between 7:00 and 7:15.

Q. And this, I suppose, is the southeast, the Mullen & Bluett, corner? A. That is right.

Q. That is where you were hustling at that time?

A. That is right.

Q. You mentioned that you stated to Jerry Cohen that you had been working? A. Yes.

Q. Now, what was the nature of that work?

A. Well, there had been times that I had been working extra on the Herald in the daytime, an hour or two hours, to make an extra amount of money.

Q. Selling the Herald? A. Yes, sir.

Q. When did you start doing that?

A. Well, it has been odd jobs. I hadn't had any steady work at it. I might have worked maybe once a week or so, and I think that had been going on for—it had been the past [1436] year, anyway, prior to the time.

Q. Now, I don't want to commit you if your recollection is indefinite, but is it fair to state that you were selling the Herald in the daytime for about a year prior to February, 1940?

A. Well, I can't estimate a year but it was within the period. It wasn't steadily for a year, I mean.

Q. But you think it commenced as long ago as say February or March of 1939?

A. I believe that is right.

Q. Now, where did you sell these Heralds, Mr. Fields?

(Testimony of John Francis Fields.)

A. Sixth and Spring, and I believe I relieved at Second and Spring once or twice.

Q. Do you recall what editions of the Herald you sold?

A. The Night Edition and sometimes the Night Final.

Q. The Night Edition and Night Final?

A. Yes.

Q. Is the Night Final the last edition of the Herald? A. No, it is next to the last.

Q. What is the name of the last?

A. The 7 star Night Final.

Q. That is full racing?

A. That is right.

Q. You didn't sell the 7 star?

A. No. [1437]

Q. How many Heralds would you sell during the course of an afternoon?

A. Well, I never really kept track of it because I was getting an hourly rate, but I should judge around 25 anyway; it might have been more at times, but that is about the average.

Q. What did you mean by that statement you were getting an hourly rate?

A. I was paid an hourly rate for working at the corner.

Q. Who paid you?

A. At that particular time, Louie Schwartz, and I believe it was Bob Lindsey. I don't remember his first name. Lindsey was the last name, anyway.

(Testimony of John Francis Fields.)

Q. Louie Schwartz, is that the same person as the Louie Schwartz who has testified heretofore in connection with the Herald

A. Correction; not Louie Schwartz; Ben Schwartz, his brother. I worked for Ben Schwartz.

Q. And Ben Schwartz paid you a certain amount of money? A. That is right.

Q. Was it dependent upon how much you sold?

A. No.

Q. It was not dependent upon the number you sold? A. No, sir.

Q. So much per hour? [1438]

A. Per hour; that is right.

Q. Do you recall how much he paid you?

A. Well, I think the highest I got was for two hours work, 50 cents.

Q. That is 25 cents an hour?

A. That is right.

Q. Did he make any deduction for Social Security? A. No, not that I know of.

Q. Well, he gave you the full 50 cents?

A. Gave me the profit, yes. That is, I mean the earnings?

Q. Are you registered as an employee of Ben Schwartz? A. No, sir.

Q. Were you engaged in any other occupation at about that time, Mr. Fields, or shortly prior to February 29, 1940?

A. February 29th? Well, I believe I have done numerous jobs for the Union.

(Testimony of John Francis Fields.)

Q. Do you receive compensation?

A. Yes.

Q. What was the nature of that work?

A. Literature, and something along that line, delivering literature.

Q. Distributing?

A. That's right. Distributing.

Q. To whom did you distribute this literature?

A. It was to the public in general. [1439]

Q. To the general public?

A. That is right.

Q. Can you tell me more definitely when you engaged in that?

A. Well, I believe it is kind of vague. I couldn't say right offhand when it came in, because these jobs came up every now and again. I never kept any records of these jobs or anything.

Q. Well, did it just arise occasionally, once a week, or was it more regular than that?

A. Well, I would say it was once or twice anyway.

Q. Once or twice a week?

A. That is right.

Q. And over what period of time did that activity extend, the distribution of literature?

Mr. Mouritsen: I will object, Mr. Examiner, that this is immaterial to the point here involved.

Mr. Yoakum: You mean it is too remote?

Mr. Mouritsen: Well, it is too remote, and in addition it is immaterial.

(Testimony of John Francis Fields.)

Trial Examiner Kennedy: I will let him answer it.

(The question referred to was read by the Reporter as set forth above.)

The Witness: Well, if I—can I ask on that question there if you mean the period of months or—I don't exactly get the point of the question. [1440]

Q. (By Mr. Yoakum) Well, I will withdraw that and try to restate it more definitely. Had you started your distribution endeavors before January of 1940? A. Oh, yes.

Q. Would you say that you had started it as early as June, 1939?

A. No, I don't believe it was as early as June, no.

Q. Possibly the fall, then, of 1939?

A. Somewhere in the fall, yes. That is right.

Q. And you continued doing it through January of 1940? A. Yes.

Q. And through February, 1940?

A. I believe so. In February too, yes. [1441]

Q. In your testimony of the 20th—that is yesterday—Volume 10 of the official transcript, I asked you this question, "About October or November, 1939, were you engaged in any other occupation than that of selling newspapers and periodicals? A.—No, I was not. Q.—You never had any other [1443] sort of job or calling for which you received compensation? A.—No." Do you recall giving that testimony?

(Testimony of John Francis Fields.)

A. Yes, I do. I believe I do remember.

Q. Do you want to correct that testimony at this time?

A. Well, I am a little confused on these dates here, as I say, in that period of the year there, so I believe that will have to be corrected. It will stand, I believe, as I stated today regarding these dates.

Q. In this conversation with Jerry Cohen on the evening of February 29, 1940, do you recall stating to Mr. Cohen in substance that the reason you were late to the corner was because you had some other work that had been keeping you [1444] away from the corner?

A. Yes, that's right. [1445]

Mr. Binford: May it be stipulated, Mr. Mouritsen, that the testimony of this witness given at this session this afternoon has no bearing and is not intended to apply to the Stockholders Publishing Company, Inc.?

Mr. Mouritsen: It may be so stipulated, with the exception of the part that the organization took in this one particular instance, because that indicates the nature of the labor organization involved.

Mr. Binford: I accept the amendment. [1451]

Saturday, June 22, 1940

Met, pursuant to adjournment, at 9:30 o'clock a. m. [1454]

Trial Examiner Kennedy: The hearing will be in

session. These cards that I have examined, that I noted yesterday——

Mr. Mouritsen (Interrupting): Mr. Examiner, before we go into that, perhaps I should say that the Union has furnished me 25 additional cards with reference to Times newsboys, and perhaps a check of those could be made before the—so that the check of all cards could be had.

Trial Examiner Kennedy: I don't think that is necessary as we have already got a representative number, and of the number that I have examined, approximately 150 total, I found that 76 of them have names on them that compared with names on Times Exhibit 6, and the dates on the cards ranged from the first date, April 6, 1940, to the last date, June 19, 1940. The cards have been returned to the Union. [1456]

Trial Examiner Kennedy: In making the check on yesterday, of course, there is no way to tell whether or not some names appear on these cards that are in the exclusions contended by the Union. As I understand it, Times Exhibit No. 6 includes the exclusions.

Mr. Cosgrove: Yes. There is no doubt about that.

Mr. Mouritsen: Yes.

Trial Examiner Kennedy: So that, as far as any complete accuracy is concerned, it is impossible from that list, and for the purpose of checking the cards, such as I did yesterday, I do not see the ne-

cessity of any great accuracy. The only purpose of that is to show the Board that the Union has some interest in the case. That is the only purpose I could see for these cards. If you have any other understanding of that requirement, I would like to have you state it, Mr. Mouritsen. [1459]

Mr. Cosgrove: What you would like to have me do, I take it is apparent, is to take your definition and go out and see how many come under that classification of the 600 names that are here, and I do not think that we should do any such a thing. I think that is immaterial.

Trial Examiner Kennedy: I do not see why it is necessary.

Mr. Cosgrove: No. We do not understand why, either. [1461]

Mr. Mouritsen: Well, so long as the company understands [1462] the claims of the unit so that they can adduce any evidence that they desire in that regard I think no further action would be——

Mr. Cosgrove (Interrupting): Well, the company is making no complaint. [1463]

RAYMOND F. MARX

called as a witness by and on behalf of the Times-Mirror Company, having been previously duly sworn, resumed the stand and testified further as follows:

Trial Examiner Kennedy: You have already been sworn?

(Testimony of Raymond F. Marx.)

The Witness: Yes, sir.

Direct Examination

Q. (By Mr. Cosgrove) You are the Raymond F. Marx who was sworn and testified heretofore and stated you were the circulation manager of the Times? A. Yes, sir.

Q. You are familiar with Times Exhibit No. 6, which is the names of the persons and locations where engaged of the various boys who deal with the district men in the sale of newspapers for the Los Angeles Times? A. Yes.

Q. You have seen that list and gone over it, have you? A. Yes, sir.

Q. Now, in this list are there any of these men that are on the Los Angeles Times pay roll?

A. Yes, there is one.

Q. What is his name? A. James Deutch.

Q. His name appears on Page 25 of Exhibit No. 6, and the notation reads: "James Deutsch, Sunset and Western. This [1465] man, James Deutsch, is on the Times pay roll receiving $12.60 per week." Is that a regular Times pay roll check?

A. Yes, sir.

Q. And how often does he receive that check?

A. Every two weeks.

Q. And for what?

A. For checking in and counting the night district men's returns in our office.

Q. He does that in the Times Building?

A. That is right.

(Testimony of Raymond F. Marx.)

Q. At second——

A. (Interrupting): At First and Spring.

Q. What time of day or night does he do this work?

A. I believe he starts about two o'clock in the morning, 1:30 or 2:00 o'clock in the morning.

Q. And it takes him——

A. Several hours.

Q. With reference to this group of names, I don't know how many there are, approximately 610, are there any Social Security registrations by the Los Angeles Times of these men?

A. Only on the one mentioned, James Deutsch.

Q. Now, does the Times carry Workman's compensation Insurance under the state Workman's Compensation Insurance and Safety Act for these men mentioned on this Exhibit 6?

A. It has such a policy that covers all employees. [1466]

Q. And is that policy—does the premium on that policy depend upon the pay roll?

A. It does.

Q. And how frequently is there a check on the pay roll? A. I believe every six months.

Q. And do the boys' names or the men's names who appear on Exhibit 6 appear on that pay roll that is checked?

A. Only the one name mentioned, James Deutsch.

Mr. Cosgrave: Cross examine.

(Testimony of Raymond F. Marx.)

Cross Examination

Q. (By Mr. Mouritsen) Mr. Marx, there are a number of newsboys whose names appear upon Times Exhibit 6 who receive an automobile allowance for transporting newsboys to their respective corners, are there not? A. That is right.

Q. Approximately how many?

A. I believe 12. I am not sure, but I believe it is 12.

Mr. Mouritsen: Nothing further.

Redirect Examination

Q. (By Mr. Cosgrove) That matter of the automobile allowance is taken care of by the district men themselves, isn't it? A. That is right.

Q. And it is a payment of money to them? There is no check or pay roll record?

A. No pay roll record whatsoever. [1467]

Mr. Cosgrove: That is all.

Recross Examination

Q. (By Mr. Mouritsen) The Times makes the district managers an allowance for the purpose of taking care of that? A. That is right.

Mr. Mouritsen: That is all.

Mr. Cosgrove: That is a part of the expenses of the district manager?

The Witness: That is part of the expenses of the district manager.

Mr. Cosgrove: That is all, Mr. Marx.

Trial Examiner Kennedy: Anything further?

(Testimony of Raymond F. Marx.)

Q. (By Mr. Mouritsen) The Times makes its district men an allowance, a car allowance, is that correct? A. That is right.

Q. For the use of their own cars? A. Yes.

Q. It is a fact, is it not, that the Times district men themselves often transport those newsboys to their respective spots in the automobiles upon which the Times makes an allowance; isn't that correct? A. That is right.

Mr. Mouritsen: That is all.

Mr. Cosgrove: The Times district men, of course, are recognized as employees of the Times? [1468]

The Witness: They are employees of the Times.

Mr. Cosgrove: And carried on the pay roll the same as any other party?

The Witness: Yes.

Mr. Cosgrove: That is all.

Trial Examiner Kennedy: You spoke about the pay roll being checked for Workman's Compensation. Do you know who does that?

The Witness: I believe our accounting department.

Trial Examiner Kennedy: Your accounting department?

The Witness: That is right.

Trial Examiner Kennedy: And they make a return to the Workman's Compensation authorities of the State; is that it; or do you know how that is worked out?

The Witness: I presume they do. I don't know. It doesn't come under my jurisdiction.

(Testimony of Raymond F. Marx.)

Trial Examiner Kennedy: That is all.

Mr. Cosgrove: Do you know whether or not a representative of the insurance carrier also checks the pay roll?

The Witness: Yes.

Mr. Cosgrove: That is all, Mr. Marx. [1469]

Mr. Mouritsen: At this time, Mr. Examiner, I move to amend the petition filed in the matter of the Hearst Publications, Inc., Los Angeles Examiner Department, which is in evidence as Board's Exhibit 1-L, so that the appropriate unit therein set out reads as follows:

"All newsboys engaged in the street sale of the Los Angeles Examiner at established spots four or more hours per day, five or more days per week, within the city of Los Angeles, California, except temporary newsboys. [1471]

"An established spot is a place where a newsboy has engaged in the street sale of the Los Angeles Examiner five or more days a week for a period of six consecutive months or more.

"A temporary newsboy is a newsboy who has been engaged in the street sale of the Los Angeles Examiner at an established spot for 30 days or less."

Trial Examiner Kennedy: That is the same as the proposed amendment to Board's Exhibit 1-P, with the exception of "and Glendale, California"?

Mr. Mouritsen: That is correct.

Trial Examiner Kennedy: Is there any objection?

Mr. Hall: No objection, your Honor.

Trial Examiner Kennedy: For the reason stated yesterday in regard to the proposed amendment to Board's Exhibit 1-P I will not permit the petition to be amended but will treat the proposed amendment as a clarification of the position of the Union, or the bill of particulars. Have you got anything further to say about that proposition as to the Trial Examiner's authority to permit amendments to petitions?

Mr. Mouritsen: Perhaps, Mr. Examiner — or could it be suggested that the Trial Examiner reserve its ruling upon the motion and let the Board pass upon it itself?

Trial Examiner Kennedy: Very well, I will do that. That will be the ruling as to the L. A. Times case also. Of [1472] course, the Board will do that regardless of my ruling. In fact, if they feel it proper to amend the Board will reverse any ruling the Trial Examiner makes on that point.

Mr. Hall: Of course, as regards that amendment, it is understood I am regarding this amendment simply as an elaboration of the contention made in the petition; and the Los Angeles Examiner does not admit that there is any such unit, nor does it admit any of the other matters in the petition which have heretofore been denied. May it be stipulated, Mr. Mouritsen, that the answer previously filed by the Hearst Publications, Inc., Los

Angeles Examiner Department, and the motion to dismiss made by it, may be deemed to apply with full force and effect to the petition if it be amended by this clarification, and if amendment is not permitted then to the clarification itself?

Mr. Mouritsen: Yes, that may be so stipulated. And I believe you stated earlier, Mr. Hall, that you were unable to secure a list of newsboys who handle the Los Angeles Examiner.

Mr. Hall: That is correct. There is no such list in existence so far as I have been able to ascertain. The names of the boys are not known. [1473]

JOHN C. WEISBACKER

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Weisbacker?

A. 1750 North Serrano, Apartment 203.

Q. That is in the city of Los Angeles?

A. City of Los Angeles—let's see, now. I think that is Hollywood.

Q. What is your business or occupation?

A. Circulation manager, Los Angeles Examiner.

Q. How long have you held that position?

A. Well, about the—the title on it—I have had

(Testimony of John C. Weisbacker.)

several. I was assistant circulation director and still am; this title just recently, in the last two months.

Q. You mean circulation manager for the last two months? A. Yes.

Q. Prior to that time you were the assistant circulation manager?

A. Assistant circulation manager, office manager and transportation manager, and still am.

Q. How long did you hold that position?

A. I held those for the past, possibly, approximately a year and a half; something like that.

[1474]

Q. Prior to that time did you have any connection with the Los Angeles Examiner?

A. Well, I came here around May the 16th, 1938; was transferred from the Herald and Examiner, from Chicago.

Q. Did you immediately assume your duties as assistant circulation manager, and these other duties that you have indicated, at that time?

A. No. I came in as a confidential accountant to Mr. Black, making a check on circulation.

Q. Mr. Black was who at that time?

A. He was the circulation director at that time.

Q. How long did you act as confidential auditor to Mr. Black?

A. Oh, offhand I don't know at the present time. I don't know when I was appointed to these other positions, the exact date. I just automatically went into them at times.

(Testimony of John C. Weisbacker.)

Q. I don't want the exact date; I would like to find out the approximate period, month.

A. Oh, possibly two or three months, maybe four. I just automatically went into these other positions.

Q. Didn't somebody appoint you to these other positions?

A. Yes, but I don't know the exact date.

Q. Who appointed you?

A. I was appointed by Mr. Black.

Q. And during the period that you have been connected with the Los Angeles Examiner— [1475]

Mr. Mouritsen (Interrupting): And may it be understood that when I refer to the Los Angeles Examiner that is a reference to the corporation here involved?

Mr. Hall: Well, I see what you mean, and I have been doing the same thing, Mr. Mouritsen. I think we can both correct that. Where either of us refers to Los Angeles Examiner they are in fact referring to the Los Angeles Department of a corporation known as Hearst Publications, Inc.

Mr. Mouritsen: Thank you.

Mr. Hall: May we so agree?

Mr. Mouritsen: I think you meant the Los Angeles Examiner Department. I believe you said, "The Los Angeles Department."

Mr. Hall: Los Angeles Examiner Department.

Mr. Mouritsen: Yes, that may be so agreed.

Trial Examiner Kennedy: Is there a question pending?

(Testimony of John C. Weisbacker.)

The Reporter: The question was not completed. It is: "And during the period that you have been connected with the Los Angeles Examiner——".

Q. (By Mr. Mouritsen): ——have you become familiar with the means and methods whereby the Los Angeles Examiner circulates its newspaper?

A. I don't quite understand the question. We do not—I don't—we do not circulate papers; we sell papers. We never circulate, I mean. We always—we sell papers.

Q. What is the meaning, then, of the title that you bear, [1476] "Circulation Manager"?

A. Well, that title is in charge of all circulation.

Q. Will you explain what you are in charge of?

A. Well, in charge of all net paid circulation after the circulation is paid for. [1477]

Q. (By Mr. Mouritsen) Now, please explain what you meant [1480] by the statement that you are in charge of all circulation?

A. Well, by that I meant that I was in charge of all papers that were printed and distributed, which were distributed for sale, and that I saw to it that those papers, less the unsold copies which are returned to the plant, were paid for.

Q. Now, can you explain briefly just what you do in performing those duties?

A. In what way?

Q. Well, will you tell us what you do? You have said that those are your duties. Now, what do you undertake in order to perform those duties?

(Testimony of John C. Weisbacker.)

A. Well, we see that the paper is printed; our transportation department, the trucks, come in and get the papers. Independent dealers come in and get the papers. They are put in the stands; they are distributed around to stands and different places wherever there is a sale for them. We see that men collect the money and bring it into the office.

Q. Wait a minute. Are the papers distributed only to stands as you say?

A. No, they are distributed to newsboys, stands, district headquarters.

Q. What are district headquarters?

A. It is the home delivery.

Q. Continue.

A. All outlying spots, trains, busses. [1481]

Q. Now, what other duties do you have?

A. Well, in what way do you mean? I mean I could possibly go on here for almost a day to go into detail of all my duties that I take care of in the office.

Q. Please do so for us as far as you can recall what duties you have.

A. Well, I have letters come in there, I answer letters.

Q. With reference to what you have said is being in charge of all circulation?

A. With reference to the sale of newspapers.

Q. (By Mr. Mouritsen) Continue and tell us further what your duties are, Mr. Weisbacker.

(Testimony of John C. Weisbacker.)

A. Well, I take care of the hiring of all employees over there in that department.

Q. And what is that department?

A. The circulation department. [1482]

Q. Continue.

A. Or anything that comes in the office there in Mr. Black's absence, I take care of it.

Trial Examiner Kennedy: By the way, who is Mr. Black?

The Witness: He is the circulation director.

Trial Examiner Kennedy: He is your immediate superior?

The Witness: Yes.

Trial Examiner Kennedy: All right.

Q. (By Mr. Mouritsen) Well, what are some of these matters that you take care of in Mr. Black's absence?

A. Well, if a party comes in and asks for Mr. Black and asks any questions about—wants to know anything, why, I just take care of it.

Q. Wants to know anything with regard to what?

A. Anything at all that they ask.

Q. Whether it is connected with your department or not?

A. Where it is connected with our department I take care of it, yes.

Q. Now, do you have any further duties other than that?

A. Well, I think that just about takes care of

(Testimony of John C. Weisbacker.)

it. Anything that comes into that department in the absence of Mr. Black, why, I take care of it.

Q. Now, I believe you stated that the printing of the newspaper comes under your supervision; is that correct?

A. No, I didn't state that the printing of the newspaper came under our supervision. [1483]

Q. Under whose supervision does that come?

A. It comes under the production department.

Q. And that is a separate and distinct department from the circulation department?

A. Yes, sir.

Q. Now, do you have any other duties connected with the gathering of news that is printed in the newspapers? A. No, sir.

Q. What departments, if any, in the circulation department are concerned with the distribution of papers to newsboys?

A. Well, the night street department, the morning street department, and our suburban and country department.

Q. And what does the night street department consist of? First, who is the head of that department? A. Mr. Arthur Hampson.

Q. And how many men are there in that night street department?

A. Right offhand I don't recall the exact number.

Q. And what does the morning street department consist of?

(Testimony of John C. Weisbacker.)

A. The morning street department consists of the A. M. independent dealers, the 10-mile independent dealers, Mr. SeeBolt, the downtown street sales area, suburban and country department.

Q. And which of these are connected with the distribution of newspapers to the newsboys within the city of Los Angeles? [1484]

Mr. Hall: You mean which divisions of this morning street department?

Mr. Mouritsen: Yes, of the ones the witness has just enumerated.

The Witness: Well, now, I don't know exactly because some of these men may overlap into the outside territory. As I recall it, you have maybe Glendale or Hollywood or something like that that they go into, or Beverly Hills.

Q. (By Mr. Mouritsen) Well, I believe you spoke of the country and suburban. Do any of those men operate within the city of Los Angeles so far as distribution of the Examiner to newsboys is concerned?

A. Well, right offhand I wouldn't know. It could be a possibility that some of those men do, but I couldn't answer that question because they stop between here and getting to their territory.

Q. Their territory, in the main, is outside of the city limits of the city of Los Angeles?

A. Supposedly so, yes.

Q. And how about, I believe you said, the 10-mile men? What is the meaning of that term?

(Testimony of John C. Weisbacker.)

A. That is just a term used.

Q. Well, what does it mean?

A. Well, it is just a term used, just like the term, like the P.M. men, the P.M. street men or the A.M. street men. [1485]

Q. It has no meaning to you other than just a term?

The Witness: Well, it does, but I couldn't define the territory unless I had a map here showing the territory. It covers a certain area and they are classed as 10-mile men. Now, what area that covers, without having a map I couldn't say offhand.

Q. (By Mr. Mouritsen) Well, doesn't the term mean, Mr. Weisbacker, men who work outside of an area that is 10 miles from the Examiner plant?

A. I couldn't answer that without getting the boundary lines of the territory involved on the 10-mile men.

Q. I see. The term was in use in the Los Angeles Examiner when you became connected with it?

A. That is correct.

Q. Now, within what areas does Bill Seebolt distribute newspapers—that, the Los Angeles Examiner—to newsboys?

A. Well, we class it as the downtown area, but as far as his boundaries are concerned, I do not know those boundaries. [1486]

Q. And within what area, if you know, do the so-called A.M. independent district managers operate?

(Testimony of John C. Weisbacker.)

A. Well, that I wouldn't be able to determine without having a map and having the boundary lines set out.

Q. But all of these organizations that you have named and Bill Seebolt distribute the Los Angeles Examiner to newsboys; is that correct?

A. That I couldn't answer because it may be a possibility that some of those don't distribute.

Q. Do you know of your own knowledge that Bill Seebolt distributes newspapers, or, the Los Angeles Examiner, to newsboys?

A. Yes, I do.

Q. Now, the so-called A.M. independent district managers, do you know if they distribute the Los Angeles Examiner to Newsboys?

A. I don't know just whether all of them do or not.

Q. Most of them do?

A. I wouldn't say that.

Q. Well, Mr. Weisbacker, don't you receive certain checkers' reports covering the work of these so-called A.M. independent district managers?

A. Just periodically, checkers' reports on stand checks.

Q. And checks on newsboys as well?

A. Not checks on newsboys, no, sir. [1487]

Q. How often do you receive those checkers' reports regarding the work of them and district managers?

A. Well, sometimes—it has been approximately

(Testimony of John C. Weisbacker.)

six months since I received the last one. Sometimes it will be a year. It all depends on what we have for our checkers to do.

Q. During the period that you have been connected with the Los Angeles Examiner, have you examined those checkers' reports?

A. I looked at them, yes.

Q. Have you examined all of them?

A. I would not say that I have. I don't recall whether I have or not.

Q. And haven't the checkers' reports that you have examined indicated that newsboys—that these so-called A.M. independent district managers distribute to the newsboys in the city of Los Angeles?

A. I don't recall whether that is on there or not.

Q. With reference to the ten mile men, do you know whether or not they distribute to newsboys?

A. No, sir, I do not.

Q. And with reference to the country and suburban men, do you know whether they distribute to newsboys?

A. I don't—possibly they do, but for me to determine I would have to go out and make a check.

Mr. Hall: Can't we leave the country and suburban out of it, to save time, Mr. Mouritsen? Certainly the newsboys [1488] in the country and suburban are not the newsboys that you have reference to in the petition.

Mr. Mouritsen: If that may be so understood, I will drop the matter.

(Testimony of John C. Weisbacker.)

Mr. Hall: Well, let us ask the witness if there be newsboys working for the country and suburban men, whether they are not outside of the city of Los Angeles limits.

The Witness: That is correct. They are.

Mr. Mouritsen: Thank you.

Q. Now, Mr. Weisbacker, what hours do the night street men work?

A. You mean our night district men?

Q. Yes.

A. I think they come on duty around six o'clock.

Q. And work until what time?

A. Well, now, the hours—they work possibly until around two o'clock or 2:30. I don't know right offhand. I think Mr. Hampson could answer that question better, possibly, because he is on duty with these men at night.

Q. And generally what hours do the so called a.m. independent district managers work?

A. Well, I am not down there when they come down in the morning. I haven't any idea wl hours they put in. They are strictly independent dealers and we do not tell them what they can do. [1489]

Q. (By Mr. Mouritsen) And what hours do the ten mile men work?

A. I think that same answer would apply to the ten mile men.

Q. And Bill Seebolt?

A. I think Mr. Hampson could answer that

(Testimony of John C. Weisbacker.)

question better, because Mr. Seebolt comes on duty early in the morning, and I don't know what time he checks—checks out.

Mr. Hall: Mr. Seebolt is in the courtroom, Mr. Mouritsen. Go ahead; I will have him here for the response to that question, if you want him.

Mr. Mouritsen: I think that is all.

Trial Examiner Kennedy: Cross examine.

Mr. Hall: I will reserve the further examination of Mr. Weisbacker until I come to put on the Examiner's case.

Trial Examiner Kennedy: Anything further from this witness? You are excused. [1490].

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony of the witness, John G. Weisbacker, has no application to the Los Angeles Times case?

Mr. Mouritsen: That may be so stipulated.

Mr. Compton: The same stipulation as to the Los Angeles Evening Herald and Express, Mr. Mouritsen?

Mr. Mouritsen: Yes, I think so.

Mr. Compton: And for the Stockholders Publishing Company on behalf of Mr. Binford?

Mr. Mouritsen: So stipulated.

ARTHUR J. HAMPSON

called as a witness on behalf of the National Labor Relations Board having been first duly sworn was examined and testified as follows:

(Testimony of Arthur J. Hampson.)

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Hampson?

A. 634 North Comstock, Whittier.

Q. What is your business or occupation?

A. P. M. Street Sales Manager for the L. A. Examiner.

Q. How long have you held that position?

A. Two years.

Q. And prior to that time were you connected with the Examiner? [1491] A. I was.

Q. In what capacity?

A. District man.

Q. Night or morning? A. Night.

Q. Are you acquainted with the duties of the—strike that. What in your present capacity are your duties?

A. I am in charge of the night street men.

Q. Will you tell us what you do in that capacity?

A. Why, I am responsible for the men to be there at a certain time, see that they get their papers, that they check in, and that they get the best sale possible.

Q. Can you elaborate more on just what you do in that capacity?

Mr. Hall: I think what he wants, Mr. Hampson, is for you to state the course of your duties, say on a given day from the time you go to work until you get back, or cease work. Is that right, Mr. Mouritsen?

(Testimony of Arthur J. Hampson.)

Mr. Mouritsen: That is entirely correct, Mr. Hall. Thank you.

The Witness: Well, I have to get the amount of papers that each man desires, turn it over as a press order; see that all men are there on time ready to go out with the papers, keep in touch with the editorial department for any news—any change in the news; inform the boys what it is; certain reports and things to make out to be turned in upstairs; and [1492] see they are checked in before they go home.

Q. (By Mr. Mouritsen) At what time of the day do your duties usually commence?

A. My duties commence about four o'clock in the afternoon.

Q. All right. When do these night men report for duty? A. Six o'clock.

Q. How late do you remain?

A. Oh, my hours vary.

Q. In general? A. In general.

Q. In general how late do you remain at the office?

A. Oh, sometimes leave at 3:30, 4:00, 5:00, 6:00.

Q. At what time do you generally check these P.M. men in?

A. They are required to be in by 2:00 o'clock.

Q. And what do they do at that time so far as you are concerned?

A. Why, they turn in their papers, figure their bill, count their money, put it in their bag, seal it

(Testimony of Arthur J. Hampson.)

and drop it in the safe.

Q. You supervise that work; it is part of your duty to see that that is done?

A. To see that they drop their money in the safe before they go home, yes sir.

Q. Do you of your own knowledge know whether or not these night district men distribute the Los Angeles Examiner to newsboys? [1493]

A. They do.

Q. Do they distribute newspapers, the Los Angeles Examiner, to other than newsboys?

A. No.

Q. And how many of these night district men are there? A. 24 counting myself.

Q. Well, you do not engage in the actual distribution of papers to newsboys at the present time; is that correct? A. I do not.

Q. There would be 23 night district men at the present time?

A. That is, counting the extra men, the relief men.

Q. How many are there? How many regular night district men are there?

A. 15.

Q. What are their names?

A. Their names?

Q. Yes.

A. Max Vener. Nick Valenty. [1494]

Q. Where do these night district men operate, within or without the city of Los Angeles?

(Testimony of Arthur J. Hampson.)

A. Their territories overlap the city limits.

Q. Some of them work outside of the city limits?

A. Part of the territory is outside, part of it is in; it is what we consider the city.

Q. Now, at what price do you furnish newspapers to these night district men?

A. The night district men has a set figure, a certain price of three cents. Anything over that is a cent and a half.

Q. And who determines the number of papers that they receive at three cents?

A. We figure his setup in the office.

Mr. Hall: Pardon me. You meant by "they" in the last question, the night district men?

Mr. Mouritsen: Yes. [1495]

Q. (By Mr. Mouritsen) What do you mean by the figure is set up in the office?

A. It comes from Mr. Weisbacker.

Q. And all papers above that they receive at a cent and a half a copy; is that correct?

A. Yes, sir.

Q. Is that changed from time to time?

A. It has been, yes.

Q. And by whom has it been changed?

A. I believe it was Mr. Weisbacker.

Q. And who determines the number of papers that they take out?

A. Themselves.

Q. Do they have a standing order?

(Testimony of Arthur J. Hampson.)

A. No sir, they do not.

Q. Do they to your knowledge from time to time change the amount of papers that they take out of an evening?

A. They do, according to the news.

Q. Is there an established price for the sale of the papers to the public? [1496]

The Witness: Five cents.

Trial Examiner Kennedy: All right go ahead.

Q. (By Mr. Mouritsen) And by whom is the price established? Mr. Weisbacker?

A. I don't know who established it.

Mr. Hall: I will stipulate, Mr. Mouritsen, that the corporation from time to time establishes that price, which is printed plainly on the first page of the newspaper.

Q. (By Mr. Mouritsen) Mr. Hampson, from time to time during the period that you have been head of these night men have you furnished them with advertising placards similar to [1497] Board's Exhibit No. 7?

A. Somewhat similar, yes.

Q. With a different name on the placard?

A. Sure.

Q. And have you from time to time furnished them other things, such as maps for display?

A. We have.

Q. And have you given them any instructions with reference to those advertising placards and maps? The answer is yes or no.

(Testimony of Arthur J. Hampson.)

A. Given them to the district men?

Q. Yes. A. Yes.

Mr. Mouritsen: I believe you are willing to stipulate, Mr. Hall, that the Examiner from time to time has furnished to newsboys selling the Los Angeles Examiner change aprons?

Mr. Hall: I will so stipulate, Mr. Mouritsen. Of course, I don't want my stipulation to preclude further inquiry upon that subject when I come to my presentation.

Mr. Mouritsen: No, that may be understood.

Mr. Hall: I want to show the conditions under which the aprons were furnished, but it is a fact, which I will stipulate, that from time to time change aprons have been furnished the newsboys by the managers—to certain of the newsboys; not by any means to all of them. [1498]

Mr. Mouritsen: I am merely trying to save time with this witness. I mean it would not be necessary, then, to go into that with this witness. His organization has furnished them to the newsboys who sell at night; is that right?

Mr. Hall: To certain newsboys, yes. [1499]

Q. (By Mr. Mouritsen) Mr. Hampson, I will show you a document that has been marked Board's Exhibit No. 16 for identification, and I will ask you, directing your attention only to that part of the picture that sets out what might be termed a change apron, upon which the words "Examiner — Best Sports News" appear, if that is a correct picturiza-

(Testimony of Arthur J. Hampson.)

tion of change aprons furnished by the Los Angeles Examiner to certain newsboys. [1500]

A. It is a correct picture of the apron.

Mr. Mouritsen: I will offer that in evidence, restricting my offer to that part only of the picture that shows the change apron.

Trial Examiner Kennedy: Received.

(The document referred to was received in evidence and marked Board's Exhibit No. 16.)

NATIONAL LABOR RELATIONS BOARD

CASE NO. XXI-R-027 ... BOARD / PETITIONER / RESPONDENT / INTERVENOR EXHIBIT NO. 16

IN THE MATTER OF Stockholders Publishing Co.

DATE 6-22-46 WITNESS Hampson

DANIEL W. ROSS, OFFICIAL REPORTER

BY Fagin

(Testimony of Arthur J. Hampson.)

Mr. Mouritsen: May the record show that I have exhibited the document, Board's Exhibit No. 17 for identification, to Mr. Hall, counsel for the Examiner?

Q. Now, Mr. Hampson, I will show you a picture containing two boxes, and I direct your attention to the box on the left-hand side of the picture, which contains what appears to be an advertising placard. I will ask you if that advertising placard is characteristic of the placards that you have furnished these night district men.

A. I don't recall ever furnishing the night district men a placard of that kind.

Q. But you have furnished them placards that are similar to [1501] that in appearance and subject matter; is that correct? A. I have.

Now, Mr. Hampson, were you head of the night men during the time when the American Legion convention was last held in the city of Los Angeles?

A. I believe I was.

Q. And can you fix that approximate time?

A. No, I cannot.

Mr. Hall: My recollection is that it was in September of 1938. Isn't that about right, Mr. Mouritsen?

Mr. Mouritsen: I believe that is correct.

Mr. Hall: Well, if you want to, I will stipulate, subject to correction by either of us on further check, that the national convention of the American Legion did occur in Los Angeles in September of 1938.

(Testimony of Arthur J. Hampson.)

Mr. Mouritsen: I will accept the stipulation.

Q. And at that time, Mr. Hampson, did you furnish to the night district men certain caps resembling the caps worn by Legionnaires, bearing advertising matter of the Examiner? [1502]

The Witness: Those that requested them, yes.

Mr. Mouritsen: I think that is all with this witness.

Mr. Hall: As in the case of Mr. Weisbaecker, I would like to reserve the right to examine this witness further when I come to the Examiner's case.

Trial Examiner Kennedy: Any further examination? You are excused. [1503]

Mr. Compton: Before we recess, may we have a stipulation from Mr. Mouritsen concerning the testimony of this last witness, that the same shall not be deemed applicable to the Los Angeles Evening Herald and Express Department of Hearst Publications, Inc.?

Mr. Mouritsen: That may be so stipulated.

Mr. Compton: And may we have on behalf of Mr. Binford the same stipulation for the Stockholders Publishing Company, Inc.?

Mr. Mouritsen: That may be so stipulated.

Mr. Cosgrove: And may it be stipulated that the testimony of the witness Hampson has no application to the Los Angeles Times case?

Mr. Mouritsen: That may be so stipulated. [1504]

Monday, June 24, 1940

Met, pursuant to adjournment, at 9:30 o'clock a. m. [1507]

WILLIAM H. SEEBOLT

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows: [1509]

Direct Examination

Q. (By Mr. Mouritsen) Mr. Seebolt, where do you live?

A. 722 West 56th Street, Los Angeles.

Q. And what is your business or occupation?

A. I am a district man or a wholesaler, or whatever you want to call it.

Q. With what paper?

A. The Los Angeles Examiner.

Q. How long have you held that position?

A. Well, this position I am now on, I have been down there six years on this, but I have been working eighteen years, night and morning.

Q. You are on the Examiner payroll, is that correct? A. Yes, sir.

Q. And receive checks from Examiner for the duties you perform? A. Yes, sir.

Q. And Social Security and Unemployment Insurance deductions are made from those checks?

A. Yes, sir.

Q. (By Mr. Mouritsen) Will you explain briefly, Mr. Seebolt, [1510] what your duties are

(Testimony of William H. Seebolt.)

in your present position and indicate what you do, as a general rule, during the period of your employment, starting at the beginning?

A. Well, I pick up the papers and take them around to various points and sell them to newsboys or give them to them to sell.

Q. What time——

A. (Interrupting) Four o'clock in the morning—a quarter to five I leave the office. I get down at four but I leave the office at a quarter to five, according to how the run is; sometimes earlier and sometimes a little later.

Q. And who determines the number of papers that you take out every morning?

A. Well, they leave it up to me, according to what kind of headlines. I use my own judgment.

Q. And after you pick the papers up at the plant, what next do you do?

A. Well, I take them around and leave them at different corners. Sometimes I leave a bunch off at Sixth and Main and I leave off a bunch at Seventh and Grand, and then I come back and re-cover them around again. If they need any more I give them more. I make two or three runs with them.

Q. Do you make only two stops in making your deliveries in the morning, the first round? [1511]

A. I make more than that. First I go to Ninth and Broadway and Ninth and Main, and up to 8th and Broadway, and 8th and Figueroa, and 6th

(Testimony of William H. Seebolt.)

and Figueroa and 3rd and Figueroa, and then 7th and Grand and 7th and Hill and 5th and Hill, and then 7th and Broadway and 7th and Spring and 7th and Main, and then to 6th and Main, there is a bunch of the salesmen there to get them, and I hand them out, that is, a small quantity, and then I go back to the office and get some more and bring them around myself all over.

Q. Is that still of the first edition or a little later edition?

A. That is the first edition in the morning, and then we generally have another one out at six or six-thirty in the morning, according to what kind of news it is, during this war trouble. When the war is not on, we only have one edition, the nine a. m. final.

Q. And what do you call this other edition?

A. A replate. It is the nine a. m. final but it is a replate.

Q. And do you distribute the Examiner to newsboys within the area that you have outlined?

A. Yes, sir.

Q. Do you distribute them to anyone else other than newsboys within that area? [1512]

A. I don't, only they come to the places where they have been doing it for years, like 7th and Grand and 2nd and Spring, they are sent up by truck.

Q. Now, approximately how many newsboys come to 7th and Grand to obtain their papers?

(Testimony of William H. Seebolt.)

A. Well, there is eight, I think, but there is more than that comes there to pay for them, because I put out papers that comes to that area myself, out of my car, the first and second editions in the morning. They are always on the corners and we give them a small amount to go there until we come out with a different headline.

Q. Well, approximately how many boys come to obtain papers from you at—did you say 2nd and——

A. (Interrupting) No; 6th and Main is where I generally go. I have about sixteen all together come there. Some of them I take myself and I think it is nine of them that come there to get them, a small amount, five or ten, and I go around to give the rest that is on their corners; like 5th and Main and 7th and Central, and them spots, I take them all down myself. They stay right on their corners.

Q. Now, at Sixth and Main do you count out the papers you sell to those newsboys who come to that spot?

A. I give them five per cent of whatever they want, whatever they think they can sell.

Q. Do you count them out yourself? [1513].

A. Yes.

Q. How long have you been doing that?

A. Well, ever since I have been working down there; that is, the last six years on this morning side.

(Testimony of William H. Seebolt.)

Q. Haven't you on occasions had newsboys count out those papers to other people, to the newsboys who come?

A. At Sixth and Main?

Q. Yes. A. No, sir.

Q. How about this other spot? There is a newsboy there that counts them out?

Mr. Hall: Will you fix what you mean by "this other spot"?

Mr. Mouritsen: I am attempting to do that.

Q. (By Mr. Mouritsen) What is this other spot?

A. Seventh and Main and Second and Spring.

Q. How many boys come to Seventh and Main?

A. Well, there is eight comes up there to get papers, but there is more than that comes to pay for them when they check in, when they come to pay for their papers when they are through.

Q. Is there a newsboy on Seventh and Grand that counts out the papers to these other boys?

A. Yes.

Q. Who is doing that at present? [1514]

A. Well, there is a man that counts the Times and the News and the Examiner there.

Q. What is his name?

A. His name is Marsh. I don't know his first name. His last name is Marsh.

Q. To how many boys does he count out papers? The eight?

A. The eight. But he received more than that.

(Testimony of William H. Seebolt.)

He receives what I put out of my car. But all he handles there is eight men that comes to get the papers off of him.

Q. How does it happen that he counts the papers out to the other boys on that spot?

A. Well, it just saves time.

Q. (By Mr. Mouritsen) Now, Mr. Seebolt, how does it happen that this man at Seventh and Grand counts out the papers to these other eight newsboys?

A. That is all that gets them. The rest of them I put [1515] there myself out of my car.

Q. (By Mr. Mouritsen) At Sixth and Main you count them out yourself; is that correct?

A. Yes, sir. Part of them there at that spot, then I go around in my car to wherever they—some of them come on later than others; some of them earlier, like Fifth and Grand.

Q. At Seventh and Main, I understand, Mr. Marsh counts out the papers? A. Yes.

Q. Who made the arrangement whereby Mr. Marsh counts out these papers to these other newsboys? A. I made it myself.

Q. How did you do that?

A. It was for the benefit of the——

Mr. Mouritsen: That may go out.

Q. The question is, how did you make that arrangement?

A. I just put them off there. He watched them for me [1516] and put them out.

(Testimony of William H. Seebolt.)

Q. Why does he watch them for you?

A. I don't understand how you mean.

Q. Well, as a matter of fact, didn't you tell Mr. Marsh to watch them for you?

A. Well, yes.

Q. Didn't you tell him to count them out to these other newsboys who came to Seventh and Grand? A. Yes.

Q. Do you pay Mr. Marsh anything for that?

A. I pay him myself; the office don't pay him.

Q. (By Mr. Mouritsen) I believe you named another spot, other than Seventh and Grand and Sixth and Main, where a number of newsboys come to get their papers, is that correct?

A. I did.

Q. Now, what was that?

A. Second and Spring.

Q. And is there a newsboy there who counts the papers out to the other newsboys?

A. Yes, sir.

Q. Who is that? [1517]

A. His name is Harry. I don't know his last name. That's all I know him by.

Q. To how many boys does he count out papers on a morning?

A. Ten—ten or twelve, I don't know just exactly which.

Q. Did you also tell Harry to do that?

A. Yes, sir.

Q. You also paid Harry for that work?

(Testimony of William H. Seebolt.)

A. Yes, I do myself.

Q. To how many newsboys do you distribute newspapers on the morning on your rounds?

A. I don't know exactly. It is around fifty-eight or sixty with all three spots.

Q. Are these older men to whom you distribute the papers or are they young school boys?

A. All men, and one or two women. Mostly all men. Two women in the whole works.

Q. Within your district are there any newsboys or school boys who sell the Examiner in the morning?

A. Not for us they don't.

Q. How do you check in newsboys to whom you distribute the papers?

A. Well, I check the majority from Broadway to Fifth Street, to Central Avenue, and Ninth Street, over at Sixth and Main myself where they come to pay me for the papers.

Q. Do all the newsboys within that area come to a certain [1518] location to check in?

A. For the Times and Examiners and Daily News, yes; all three of us there together.

Q. But you are there; is that right?

A. I am there at that spot.

Q. And the newsboys come to that spot to check in?

A. From Broadway over, yes—from Fifth and Broadway to Eleventh and Broadway, and from Broadway to Central Avenue.

(Testimony of William H. Seebolt.)

Q. Are there any newsboys who sell Examiners within that area for whom you check in other than at that spot? A. No.

Q. Now, what do you understand the term "main spot newsboy" to mean?

A. Main spot?

Q. Main spot newsboy.

A. Those are the spots that sell the most papers. Some of them all sell about the same.

Q. What is the difference between main-spot newsboy and off-spot newsboys, if there is a difference?

A. Well, one is where one sells more than the other.

Q. Do the main-spot newsboys as a general rule receive the papers from you and count them out to the off-spot boys? A. Yes, sir. [1519]

Q. Do you understand the term "traffic spot"?

A. I have none of them. We have none of them in the morning.

Q. What do you understand by the term "traffic spot"?

The Witness: The only thing is, that I know of, a man selling out in the traffic or something like that is all I know about.

Q. (By Mr. Mouritsen) Now, during the time that you have been in this area, have been working in the area that you have described, have you put on any additional newsboys on any of these spots that you cover?

(Testimony of William H. Seebolt.)

A. Not lately, unless somebody gets a job at something else or tells me they don't want to sell any more. That has been——

Q. (Interrupting) And you—pardon me.

A. Which has been about seven or eight months since we have, that is, with the exception of two or three real small spots that we didn't have no place else—have anybody to sell. Some of them will and some won't go. We would rather do that than to go around trying to sell them.

Q. Am I correct in understanding that you have made no [1520] more than two changes in in the last six or seven months in that area?

A. I have not.

Q. The same newsboys have been operating on those spots in the area that you cover?

A. That is right. Unless a man gets sick, and we tell him somebody else wants to sell his corner, and we send him down there, tell him where to go, and if he don't want to go it's up to him.

Q. In the past two years have you put any new newsboys on the spots which you cover?

A. No, I have not.

Q. During the past two years have you taken any newsboys off the spots? A. No.

Q. (By Mr. Mouritsen) During the past year have you changed any newsboys in that area from one spot to another?

A. No, sir. Any further change—only one fellow was [1521] sick and another fellow took his

(Testimony of William H. Seebolt.)

place to check in where he sells at. This fellow is in Sawtelle at the hospital and he has been over there about four years.

Q. Now, during the past two years have you turned in any report showing the places where you leave papers and the approximate number of papers that you leave at such spots?

A. Turn them in to whom?

Q. To the office.

A. No, sir. The only place the office sends papers to is Second and Hill, the first bunch, and the next I take down—or Second and Spring.

Q. Have you taken a vacation during the last two years? A. Last year I did.

Q. And who did your work during your absence, if you know?

A. Well, the relief man that is there, one of the extra men that works for the Examiner. I don't know just how many they have got, but they switch them around when we take our vacations.

Q. Did you make out a list for him showing the spots where you left the papers, and how many you left, approximately, at those spots?

A. Yes, sir. [1522]

The Witness: He has been working extra for Mondays and Saturdays that I have off days. He knows them all.

Q. (By Trial Examiner Kennedy) I understood you to answer "yes" to that question.

A. I would make out a list, but he knows them.

(Testimony of William H. Seebolt.)

I had made out a list when he went on. That was over a year ago.

Q. (By Mr. Mouritsen) Well, Mr. Seebolt, the question was, did you or did you not make out a list for the man who took your place during your vacation? A. Yes, sir.

Q. What did you do with the list?

A. I gave it to him.

Q. And who was that?

A. Well, Branado. I don't know what his first name is. Branado was his last name. He was working for my vacation. B-r-a-n-a-d-o, I think it is.

Q. And is he also known as Blackie Costello?

A. I don't know that. All I know is Branado, the way he signs his name on the check-in slips that we turn in to the office. [1523]

Q. Now, how much do you collect from the newsboys within your area per paper when they check in to you? A. For each paper?

Q. For each paper.

A. Well, all of them, they check in three cents for each one they sell. What they don't sell they hand their papers back.

Q. Do you also distribute the papers in the area that you have named on Sundays, Sunday mornings?

A. I distribute all the papers, check in with all of them on Sunday morning myself, individually.

Q. And do the papers appear at a different hour, the Sunday edition, than the week-day edition?

A. Yes, sir.

(Testimony of William H. Seebolt.)

Q. And what is the hour on Sunday that the Sunday copies of the paper first appear?

A. Well, the first time, I get them at three o'clock Sunday morning. That is the last paper—the last Sunday morning paper that is printed.

Q. I see.

And you distribute the papers then at or about three o'clock on Sunday?

A. Some of them. I go to Sixth and Main and put them out five at a time there when they come around about six-thirty or seven o'clock, according to whether we are late or [1524] no, whether we get a truck or not.

Q. Now, during the past two years, have you started leaving papers at a spot that you did not leave them at before? A. No, sir.

Q. And on Sunday mornings do you have any other spots, where a number of newsboys come to secure the papers you distribute?

A. No, sir. Everything I distribute myself either out of my car or off the truck.

Q. Within your area, do you have any newsboys who handle Sunday only copies of the paper?

A. Sometimes the fellows don't want to sell on Sunday, sells all three papers, and we have to find somebody who wants to sell. If we don't, we don't have nobody to sell them.

Q. Well, do you have anybody in the area who sells the Sunday only copies of the Examiner?

A. Sometimes we do and sometimes we don't.

(Testimony of William H. Seebolt.)

Q. In your area? A. Yes, sir.

Q. Well, do you at the present time have any newsboys in your area who sell Sunday only copies of the Examiner?

A. Well, we had one new one—I didn't work last Sunday and I don't know, but Sunday before last we didn't have [1525] any. There was two places they could have been sold but nobody showed up to sell them and we just didn't send any out.

Q. The most of the newsboys in the area you cover work five or more days a week?

A. Some of them do and some of them don't.

Q. Well, most of them do, do they not?

A. Most of them sell five days a week, some of them six.

Q. Approximately how many are there who do not sell on Sundays?

A. Well, it is kind of hard for me to figure that up right now. I would have to take and check up.

Mr. Hall: I will be glad to have him bring out the fact that these fifty-eight or sixty newsboys that he has referred to are within what we may call your elaboration of the description.

Mr. Mouritsen: Thank you. I accept that.

Mr. Hall: I have no objection to that line of inquiry. [1526]

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Hall) What are the boundaries of the downtown area within which you sell papers to newsboys?

(Testimony of William H. Seebolt.)

A. From 11th and Broadway to Temple and Broadway, and from Figueroa to Central Avenue, for me.

Q. Well, then, if I understand you correctly, the area would be bounded on the north by Temple Street? A. Yes.

Q. On the south by Eleventh Street?

A. Yes, sir.

Q. On the west by Figueroa Street?

A. Yes, sir.

Q. And on the east by Central Avenue?

A. Yes.

Q. Now, then, when you refer to checking in you have reference to the act of making payment for papers received; isn't that right?

A. Yes, sir.

Q. The term "drawing papers" is applied to the operation that the newsboy goes through when he receives the papers for resale; is that right?

A. Yes, sir.

Q. Does this man named Marsh who checks in for you at Seventh and Grand Avenue sell any other newspapers besides [1527] the Examiner?

A. Yes, sir.

Q. What other newspapers?

A. The Times and the Daily News or the Morning News.

Q. What territory does he occupy to make those sales?

A. Just at Seventh and Grand.

Q. Now, this man named Harry who checks in

(Testimony of William H. Seebolt.)

at Second and Spring, does he sell any other newspapers besides the Examiner, the Los Angeles Examiner?

A. The Los Angeles Times, yes.

Q. Where does he make his sales?

A. Fifth and Hill.

Q. At the session of this hearing on June 22, 1940, the following definition was read into the record by counsel for the Board, and I am going to read it to you:

"All newsboys engaged in the street sale of the Los Angeles Examiner at established spots four or more hours per day, five or more days per week, within the city of Los Angeles, California, except temporary newsboys. An established spot is a place where a newsboy has engaged in the street sale of the Los Angeles Examiner five or more days per week for a period of six consecutive months or more. A temporary newsboy is a newsboy who has been engaged in the street sale of the Los Angeles Examiner at an established spot for thirty days or less." [1528]

My question now to you is this: Are these fifty-eight or sixty newsboys that you have made reference to, who buy their newspapers from you, newsboys engaged in the street sale of the Los Angeles Examiner at established spots four or more hours per day, five or more days per week, within the city of Los Angeles, except temporary newsboys? A. You mean, do they?

(Testimony of William H. Seebolt.)

Q. Do they qualify under that definition?

A. I don't know just how you mean that.

Q. Well, let me split it up a little. Are these fifty-eight or sixty newsboys you have referred to newsboys that occupy established spots — and I mean by that a spot where a newsboy has engaged in the sale of the Los Angeles Examiner five or more days per week for a period of six months or more.

A. Some of them do and some of them don't. We don't have any jurisdiction over them. They can do whatever they want to do.

Q. But about how many would you say occupy established spots?

A. Well, most all of them that is down there— most all of them that has been down there any length of time since I have been working down there. Some of them has been working down there twenty years or twenty-five years, selling there.

[1529]

Q. Would you say all those fifty-eight or sixty occupy established spots?

A. I don't know just exactly how many.

Q. Are any of those fifty-eight or sixty temporary newsboys, meaning by that a newsboy who has engaged in street sales for thirty days or less?

A. Well, there is not very many; maybe one or two.

Q. And would you say that there might be one or two that didn't occupy established spots?

(Testimony of William H. Seebolt.)

A. Just about that many.

Q. And all the rest except those one or two——

A. (Interrupting) Yes, sir.

Q. (Continuing) ——sell the Examiner for four or more hours per day, five or more days per week, is that right? A. Yes, sir.

Q. And they all sell the Los Angeles Examiner within that territory that you described, bounded by Temple and Eleventh Street and Figueroa and Central Avenue, don't they? A. Yes, sir.

Q. None of these newsboys sell the Los Angeles Examiner outside of that area, do they?

A. No, sir.

Q. Do you transport any newsboys from any spot to a location where they make their sales of the Examiner? A. No, sir. [1530]

Q. Aside from these two men that you have mentioned, one named Marsh and the other named Harry, do you pay any newsboys any money?

A. No, sir.

Q. Will you tell us about how many of the newsboys within the territory you have referred to sell in addition to the Examiner the Times and the News?

A. Well, I would have to figure it; I would have to figure up all of them corners. There is at least half of them.

Q. Now, I think you have stated that on the daily papers, you sell the papers to the newsboys at three cents a copy, is that right? A. Yes.

(Testimony of William H. Seebolt.)

Q. How about the Sunday papers? What do you sell those to the boys for?

A. Eight cents apiece.

Q. Do you handle any news racks?

A. No, sir. [1531]

Q. You haven't within the last two years put out any news racks? A. No, sir.

Q. Within the last two years have you put out any boxes? A. No, sir.

Q. Now, tell us about the situation as to aprons, change aprons.

A. Well, as a rule we never in the mornings, because we have all been down there together and it would be showing partiality to one to give one and not the other, unless they come around with an apron, they get it somewhere else. We have requests for them.

Q. Do the boys ask you for aprons?

A. Yes. I tell them I will try and get one.

Q. Do you ever hand out aprons unless requested so to do by the boys?

A. I don't, no, sir.

Q. Is it or is it not true that newsboys in your territory selling the Los Angeles Examiner will wear aprons with some name on the apron other than "Los Angeles Examiner"?

A. Yes, it is true.

Q. In the testimony at the last session by Mr. Hampson, reference was made to cards and maps. Will you state what you have to do or what you do

(Testimony of William H. Seebolt.)

with reference to cards advertising the Los Angeles Examiner and the maps that were referred to by Mr. Hampson?

A. Well, I never have anything to do with them because they are always—when I come to work they are always up [1532] by the corneres or—we don't have as many corners to put them as they do at night or in the week days. In the week days we never handle them.

Q. Do you tell the newsboys they have to display those cards? A. I do not.

Q. Do you tell the newsboys they have to display those maps? A. I do not.

Q. One of the witnesses made reference to blasting his papers. Did you ever hear that phrase used in the retail newspaper business, blasting papers?

A. I don't understand what that means.

Q. Well, I didn't at the time. Let me put you this question: Some boys, I take it, make more noise than other newsboys, is that right?

A. They have got stronger voices, if that is what you mean.

Q. Well, isn't it a fact some newsboys call their papers and some don't call them very much?

A. Yes.

Q. Do you issue instructions to the newsboys as to how they shall call their papers?

A. No, sir.

Q. Do you leave it up to them entirely as to

(Testimony of William H. Seebolt.)

whether they shall call the papers at all or not? [1533] A. I do.

Q. Suppose at a given corner on a given morning you handed a newsboy a certain number of papers, and the newsboy then and there requested that you give him five or ten more copies of the paper. Would you do so as a matter of practice?

A. Yes, sir.

Q. When you pick up your first load of newspapers in the morning, where do you pick them up?

A. The Los Angeles Examiner.

Q. That is located where—in the city of Los Angeles?

A. Eleventh and Broadway, in the alley, yes, sir.

Q. It is located at what streets in the city of Los Angeles?

A. Between Hill and Broadway is where I pick my papers up, at the mailing room there where they distribute all the papers.

Q. The plant of the Examiner is located at Eleventh and Broadway in the city of Los Angeles, isn't it? A. Yes, sir.

Q. Now, in the Times case the witnesses referring to the plant of the Los Angeles Times have referred to a locality at the plant by designation of concourse. What at the Los Angeles Examiner goes by that name down there?

Mr. Mouritsen: I will stipulate it is known as the alley, I believe. [1534]

Mr. Hall: I will accept the stipulation.

(Testimony of William H. Seebolt.)

Q. Is that correct, Mr. Seebolt?

A. Yes; the alley.

Q. And at the alley there is a loading platform, isn't there? A. Yes.

Q. Now, is it at that platform where you pick up your papers in the morning? A. Yes, sir.

Q. And you pick them up at that place on each time you go to the plant to get papers, isn't that correct?

A. In case of a replate, yes, sir.

Q. Assuming that there is no replate edition on a given morning, do you go to the plant more than once to pick up a load?

A. Well, it is according to how many we take out.

Q. There is no fixed rule about that, in other words? A. No, sir.

Q. Do you as a matter of practice issue instructions to the newsboys as to the time when they must show up at a given corner or place to receive their papers?

A. The only thing, unless they come and request for something, whether they can meet us at such and such a time. If some person comes down and wants to sell papers, why——

Q. (Interrupting) Let's see if I understand you. If a [1535] newsboy asks you when papers are to be dumped at a certain corner or location, you will tell him in advance, won't you? A. Yes.

Q. But aside from that, do you issue instruc-

(Testimony of William H. Seebolt.)

tions to the newsboys in general that they must show up at a given spot to receive their papers at a given time?

A. No, I don't. I just tell them what time I will be there. [1536]

Q. During the last two years have there been any instances where newsboys came to you at the time of the check-in and said that they had lost some of the papers that had been originally delivered to them?

The Witness: They have. [1537]

You recall such an instance, do you, Mr. Seebolt?

A. Well, not lately I haven't had no one come and tell me that.

Q. Well, have you within the last two years?

A. Yes, sir, I have. [1538]

Q. (By Mr. Hall) Under examination by counsel for the Board you have testified that newsboys at the time of the check-in paid you three cents for the newspapers that they had sold, is that right? [1539] A. Yes, sir.

Q. How do you know whether they have sold the newspapers or not?

A. I don't know. I take their word for it.

Q. Is it true that at the time of the check-in the newsboys pay you for all newspapers that they have received except for newspapers which they return to you as unsold?

A. It may happen there is one short, like that, or they claim there is one stolen or something like

(Testimony of William H. Seebolt.)

that. Not all of them.

Q. (By Mr. Hall) Then there are claims made from time to time that a newspaper is stolen, is that true? A. Yes, sir.

Q. What do you do in that type of case?

A. Well, once in a while—we cannot afford to take it all from everyobdy. If they all get in the habit they might come dow and say that they were all short, or stolen.

Q. Is it or is it not a fact that the newsboy himself has to stand that loss?

A. Not all of them, no.

Q. Do they in certain instances? [1540]

A. Well, it is according to how many they sell.

Q. Are there instances where the newsboy is required to stand that loss?

A. There is only very few of them.

Q. When you yourself check in at the Los Angeles Examiner plant you check in, do you not, for the newspapers that you have drawn, claiming credit for returns, isn't that correct?

A. Yes, sir. Every one.

Q. So that if a newsboy is allowed for a lost paper or a stolen paper you have to stand the loss, do you not? A. I do, yes, sir.

Q. Mr. Hampson in his testimony at the last session, referring to night sales, referred to a quota which each district man would draw at three cents, stating that for papers drawn over that quota the district man could draw the papers at a cent and

(Testimony of William H. Seebolt.)

a half. Now, does that quota practice apply in your work with respect to morning sales?

A. No, sir.

Mr. Hall: That is all.

Trial Examiner Kennedy: Is there anything further?

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Seebolt, most of the newsboys within the area that you cover have been on those spots longer than you have been in that area yourself, is that [1541] correct?

A. Yes, sir.

Q. And due to that fact it was not necessary for you to tell the boys what time to appear for the papers, is that correct?

A. Well, they have all known for years down there, just the same as I know, when to come down.

Q. And it was not necessary for you to tell them what to do with the maps or cards that you furnished them, isn't that correct? A. No, sir.

Q. And in those cases it was not necessary for you to tell them where and what time to check in, is that correct? A. Yes, sir.

Q. It was necessary for you to?

A. No, it was not necessary. They know.

Q. And at this place where you check in, how long do you remain there as a general rule?

A. Well, some of them started in at 9:30, quarter to 10:00. I stay there until 10:30 myself.

Q. And when do you first reach there as a general rule? [1542]

(Testimony of William H. Seebolt.)

A. About 9:30, 9:15, maybe 9:00—quarter to. Maybe if I get tied up in traffic it will take me a little longer.

Q. And in order for them to check in with you at that time it is necessary for them to come during the period that you are there, isn't that correct?

A. Well, I am generally always there, unless something serious happens.

Q. Yes. But in order for them to check in at that place they have to come during that period while you are there, isn't that correct?

A. Yes, sir.

Mr. Mouritsen: I think that is all.

Recross Examination

Q. (By Mr. Hall) The money that Marsh and the boy named Harry receive comes out of your pocket, according to your testimony? A. Yes.

Q. That is correct, is it? A. Yes, sir.

Q. Isn't it true that when one of the newsboys who has been selling the Los Angeles Examiner, and possibly other papers, in the morning leaves his location he will leave his Los Angeles Examiner newspapers with the Herald boy for [1543] resale by the latter? A. Yes, sir.

Q. (By Mr. Hall) Does the Los Angeles Examiner boy leave his papers with the Herald boy as a result of any instructions that you give the Los Angeles Examiner newsboy?

A. I do not. It has been the custom for years

(Testimony of William H. Seebolt.)

down there, since the Herald and Examiner has been working together.

Mr. Hall: That is all. [1544]

Mr. L. B. Binford: Before the recess, may we have a stipulation, Mr. Mouritsen, that the testimony of this witness so far as the Stockholders Publishing Company is concerned is not applicable?

Mr. Mouritsen: Yes, that may be so stipulated.

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony of the witness William H. Seebolt has no application to the Los Angeles Times case?

Mr. Mouritsen: It may be so stipulated. [1547]

Mr. Mouritsen: May this be marked Board's exhibit [1458] next in order?

The Reporter: It will be marked Board's Exhibit 19 for identification.

(The document referred to was marked as Board's Exhibit No. 19 for identification.)

[1549]

BOARD'S EXHIBIT No. 19

Los Angeles Newsboys C. I. O. Local
Industrial Union No. 75
Room 304—Currier Building
212 W. 3rd St., Los Angeles
Phone MUtual 5747
111 [Union Label]

President—Ben Rothman
Vice-President and Organizer—Pat Comorre
Treasurer—Rubin Charin
Trustees—Leonard Sherman, Edward Patch, Phil Spampinotti
Executive Board Members—C. Sanchez, W. Axelrod, Jake Bell, D. Overstreet, A. B. Collins, M. Lininger, James Deutsch, Roy Barr, R. M. Powers, O. T. Austin
Sgt.-at-Arms—Will Allen
Secretary, Arthur Page

November 9, 1939.

Mr. A. F. Logan, Bus. Mgr.
Los Angeles Examiner
Los Angeles, California

Dear Mr. Logan:

Upon the death of Arthur Page, I was duly elected Acting Secretary of the Newsboys L. I. Union # 75, and in looking over the files in the office, I find that several attempts to meet with you to negotiate some sort of an agreement for the newsboys selling your paper have been of no avail.

In one instance, I find on file in my office a copy of a letter addressed to Mr. Maurice W. Howard, Field Examiner of the National Labor Relations Board signed by you, in which you state that prior to your coming to Los Angeles you were managing the Seattle Times and that (quote) "In the first place, we recognize Federal Laws as something to be complied with unequivocally and we will not tolerate any irregular act on the part of any of our executives or employees". Therefore, I take it for granted that my asking you to set a date at which time a committee of newsboys (members of the Union) may meet with you to discuss conditions of the newsboys as they apply to your publication and methods of bettering those conditions will not be out of place. Therefore, may I suggest that you set a date in the near future, at which time I hope we can come to a mutual understanding on this problem.

Awaiting your early reply, may I remain

Yours sincerely,

R. ELEY,

Acting Secretary.

RE:er

uopwa9

(Attached envelope):

From News Boy's Local Industrial Union No. 75 C.I.O., 212 West 3rd Street, Los Angeles, Calif. 111 [Union Label] To Mr. A. F. Logan, Bus:

Mgr., Los Angeles Examiner, Los Angeles, California. (Stamped): Registered Nov. 9, 1939, 204586. Return receipt requested. Fee paid.

Trial Examiner Kennedy: Well, now, in considering this objection, what is the situation with regard to securing a payroll or a list of persons allegedly working for the Los Angeles Examiner whose names might appear on these cards?

Mr. Mouritsen: Well, I have requested such a list of Mr. Hall and I believe Mr. Hall has explained in the record the situation with reference to his being able to obtain such a list. If that is not in the record perhaps Mr. Hall would clarify that.

Mr. Hall: Well, no such list exists, if the Examiner please. As to the possibility of preparing such a list, I am doubtful concerning that. The contacts that might be employed for the purpose of procuring a list are not, as in [1552] the case of some of the other newspapers, employees of the Los Angeles Examiner.

For example, men have been mentioned or were mentioned last week in the record as A. M. independents. The newspaper takes the position and maintains, truthfully, I believe, upon the facts, that those men are not employees.

To procure such a list, therefore, or to procure that part of the list within the knowledge of these A. M. independents, we would in effect be going to

our wholesale dealers and saying to them, "Supply us with a list of your retail dealers, your retail outlets."

The practical difficulty of even inaugu ting an attempt of that kind is illustrated by the fact, further, that it wasn't until last Saturday that we knew what the character of person was that is alleged to be the kind of person that composes the alleged bargaining unit, and if despite the other difficulties that I have called attention to we could have prepared a list it would apparently have been not the list that counsel has in his mind.

The difficulties of this thing, I think, are manifest by what already appears in the record with respect to the Los Angeles Times. Mr. Cosgrove, I think, stated that it took approximately a month to compile that list and it appeared last Saturday that the list is not at all what the attorney for the Board wants. [1553]

CHARLES SEKLEMIAN

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Charles? A. 1519 North Western Avenue.

Q. Do you at present handle the Los Angeles Examiner? A. I do.

(Testimony of Charles Seklemian.)

Q. Where do you handle it?

A. Sunset and Western. Northwest corner of Sunset and Western.

Q. How long have you held that spot?

A. On that particular spot since early 1935. [1557]

Q. (By Mr. Mouritsen) What spot did you have immediately prior to your present spot?

A. The off-spot on Hollywood and Western. That would be the northeast corner. [1558]

Q. From whom did you obtain your present spot? A. From Bill Barrows.

Q. Was he also your district man on the other spot, the [1559] one that you owned prior?

A. That is right.

Q. Who is your present district manager for the Los Angeles Examiner?

A. Nick Velanty, or Volanty, I am not positive which way it is pronounced.

Q. Have you ever had a conversation with him relative to the manner in which you operate on your spot?

A. Well, the most recent one was Friday evening. Last Friday evening.

Q. Where did the conversation occur?

A. On my corner—on the opposite corner from where I sell.

Q. Was anyone else there other than you and Velanty?

(Testimony of Charles Seklemian.)

A. There might have been others on the corner, but I don't think they were in hearing distance.

Q. Now will you state what you said to Velahty and what he said to you?

A. Well, when he first came up—or, when he came up with the double C's I had twenty-six Peaches left out of the amount of the total, being fifty up until that time, and he looked at me rather peeved and disgusted and he said, "Do you mean to tell me twenty-four is all you have sold?"

I said, "Well, they are going rough." I said, "I have had good nights here. You will admit if you want to." [1560] I said, "Unfortunately, I have got a rough night tonight," and that got him to the extent where he * * *

The Witness: Well, he said, "All the other corners are doing all right. What is the matter with you here?"

I repeated that I had better nights previously, and I could have better nights in the future, but unfortunately Friday night was a rough night and I have no control over it.

Q. (By Mr. Mouritsen) What, if anything, further did he say?

A. Well, he left me twenty-five more double C's and now that I recollect I took fifteen of my Peaches over to him, which I had been doing prior, and he refused to trade me and told me to keep selling—keep pushing.

(Testimony of Charles Seklemian.)

Q. What are these Peaches you are telling about?

A. The first edition that comes out; the double C's are the second.

Q. The Peaches are the first edition of the paper that you handle? [1561] A. That is right.

Q. Will you tell us further what Velanty said to you regarding your manner of operating?

A. Well, later on, along about 10:20—it might have been about 10:30 that evening when he got around, and he inquired again.

Q. Well, now, wait a minute. Where did this—did you have another conversation with him about that time?

A. Well, he pulled that out and he left me the twenty-five doubles, and instructed me to keep pushing the Peaches. That is when he first came out with the double C's. So, on the 10:30 recovery he pulled over by the drug store in front of which I sell and——

Q. (Interrupting) Was anyone else there with him? A. Yes. I believe there was.

Q. Who else was with him, if you knew him?

A. Some other hustler who I don't know by name.

Q. Was anyone else present other than you, Velanty and this other hustler?

A. Not within hearing distance. There might have been somebody around the corner.

Q. Will you state what Velanty said to you and

(Testimony of Charles Seklemian.)

A. Well, on that occasion he seemed to be very much upset. [1562]

Tell us what he said.

The Witness: So he said, "So you put me behind the eight ball, did you?"

I said, "What do you mean?"

He said, "You know what I mean."

I said, "Well, just explain yourself."

He said, "Well," he said, "you have no business to go shooting off your mouth."

I said, "Now, wait a minute," I said, "I haven't shot off my mouth and," I said, "furthermore, I havent done anything to hurt you."

He said, "Yes, you have."

I said, "Well, what is it?"

So he said—he repeated that I had got him behind the eight ball, and he said, "If you don't watch your step," he said, "I'll have you behind the eight ball."

I said, "Well, I still don't get what you mean." [1563]

Then he brought up—mentioned the fact that I was going rough, that is, my sheets had fallen, and the other corners were going over the top.

I said, "Well, I hit a rough night; what could I do about it? I have had better nights previous." I said, "You will admit that if you really want to."

Q. (By Mr. Mouritsen) Well, what, if anything, did he say in this conversation regarding

(Testimony of Charles Seklemian.)

your checking in, or anything else regarding the manner of your operation?

A. Then he said, "Don't forget," he said, "I am your boss." To start the conversation he said, "You are an independent dealer." He said, "I bring your papers; you buy them off me; you sell them," and the climax of the conversation, he said, "Don't forget," he said, "I am still your boss."

Q. Now, prior to this time, what had been your practice in checking in?

A. Well, I checked in once a night at the end of the night.

Q. Now, as a result of any conversation you had with him, did you change the manner of your checking in?

A. Yes. He instructed me Friday night that he wanted me to——

Q. (Interrupting) Wait a minute. Is this the same conversation?

A. No. This is a later conversation. [1564]

Q. All right. Now, where did this conversation, later conversation, occur?

A. This later conversation occurred on the southwest corner, directly opposite mine.

Q. And who were present?

A. There were two other hustlers present.

Q. Was this on the same night as these other two conversations? A. Correct.

Q. Do you know the names of these other two hustlers who were there?

(Testimony of Charles Seklemian.)

A. One of them I know by first name.

Q. What is his first name?

A. Joe. The second one, I know him by sight but not by name.

Q. And you were present and Velanty was present; is that correct? A. Correct.

Q. Now, will you state what Mr. Velanty said to you and what you said to him?

A. Well, he said—he started the conversation by saying, "Well, you are an independent dealer. I bring you your papers, and you buy them and you sell them." And he says—and he went to the extent of threatening me. [1565]

The Witness: Well, he threatened me by saying that if I was not careful, why, he will hurt me. Then he says, "Beginning tomorrow night," he says, "you pay me once at 7:30"—however, he didn't show up until 8:00 o'clock. This was Saturday night.

Then he said, "You will pay me at 11:00 o'clock," but he showed up at 10:30; and then he showed up again—or 10:15, I believe it was—I made a mistake on the precise time. Then he showed up again at approximately 1:20, and I paid him off once more and completed the night payoff at approximately 2:10, 2:15.

Q. (By Mr. Mouritsen) Since that time, have you been checking in in that manner?

A. Well, you see, nightly my bill is short as compared with Saturday. Nightly I pay him once a night, but Saturday he demanded that you do the

(Testimony of Charles Seklemian.)

large amount of the bill, the impression he conveyed to me he wanted to make it hard for me, that was all. Prior to that time I had been checking into him once a night throughout the week.

Q. Have you ever had a conversation with Velanty—strike that. [1566]

Has he ever laid you off on that corner on any occasion? A. He did.

Q. And about when was that?

A. That was around in September—sometime in September.

Q. What year? A. 1939.

Q. And did he have a conversation with you regarding your layoff?

A. Well, just on a Sunday night prior to the layoff, which occurred on Tuesday night, he informed me that——

Q. (Interrupting) Well, now, where did he inform you? A. On the corner.

Q. Was anyone else present?

A. Not to my recollection.

Q. What did he say to you and what did you say to him?

A. He said to me that he had got a telephone call from a fellow who runs a beer garden off of my corner there stating to him that due to the fact I was wearing a Bridges button, and a C.I.O. Union button, that he was no longer going to buy papers of me, and that he was going to bar me from enter-

(Testimony of Charles Seklemian.)

And Velanty said he was the one that answered the phone personally, and no one else at the office was aware of it outside of himself. And he stated that—"Why don't you hide those buttons?" [1567]

Q. Well, during that conversation did he say anything to you regarding the falling off in the number of papers you had been handling?

A. Well, he claimed that I had been falling off and that he had gotten other beefs concerning me on the corner, and that the office was sending out another hustler to take my place on Tuesday night of that week, and paying him the sum of $4.50 for the night's work.

Q. Well, after that conversation did he take you off the corner on the following Tuesday night?

A. He did.

Q. And did you obtain the corner again from him?

A. Well, I hung around the corner from about midnight until—well, it might have been a little after midnight, but he come around the corner and I spoke to him.

Q. After the conversation did he put you back on the corner?

A. Yes, at the end of the conversation he says, "Report back to work tomorrow night at the usual time."

Mr. Mouritsen: You may inquire.

(Testimony of Charles Seklemian.)

Cross Examination

Q. (By Mr. Hall) Have you been selling Los Angeles Examiners during the past two years?

A. I have.

Q. How many days a week? [1568]

A. Seven.

Q. And at what spot have you been selling?

A. At Sunset and Western in Hollywood.

Q. Did all of these conversations you have referred to occur at one of the corners of that intersection? A. That is right.

Q. Did you say you had been in motion picture work? A. I have.

Q. During the past two years? A. No, sir.

Q. Are you an actor? A. That is right.

Q. You are a motion picture actor?

A. Correct.

Q. When you sell newspapers at that corner, do you make a noise that attracts custom?

A. I did when I first started, but I no longer do.

Q. When did you leave off making a noise?

A. Well, I don't recollect the precise time.

Q. Well, have you been calling your papers during the last year?

A. Well, I holler "Examiner," but I don't holler any headlines, if that is what you are referring to.

Q. But you do holler "Examiner"?

A. I do. [1569]

Q. And you have been in the paper-selling

(Testimony of Charles Seklemian.)

business long enough to know that is the best way to sell papers, is that correct?

A. By hollering the headlines?

Q. By hollering the name "Examiner."

A. Well, I do holler the name "Examiner."

Q. Well, I didn't say you didn't, but I am asking you if that is what you believe to be the best method of disposing of your newspapers.

A. Well, that works at times.

Q. I beg your pardon?

A. That works at times.

Q. Well, you do whatever you think works, don't you, in order to sell your papers

A. That is right.

Q. What editions of the paper do you handle?

A. The entire three that comes out in the evening.

Q. The Peach, the Double C and the Triple C?

A. Correct.

Q. You don't sell the morning edition, do you, the 9:00 a. m. final? A. No, sir.

Q. Is your spot at Sunset and Western a main spot or an off-spot?

A. Well, it may go in the category of a main spot because [1570] there is a hustler that works the traffic one night a week, being Saturday night, who handles the Times and the Examiner. Outside of that, I am there alone as far as the Examiners are concerned.

Q. You mentioned the name of Bill Barrows.

(Testimony of Charles Seklemian.)

Am I correct in understanding that he used to be your district man out there? A. Correct.

Q. When did he stop being your district man out there, approximately?

A. I believe it was in 1937, if I am not mistaken —1936 or 1937. I don't recollect the precise year.

Q. And since that time Nick Velanty has been your district man

A. No. I have had two others prior to Velanty.

Q. When did Velanty commence to be your district man?

A. I believe it was in early 1938, if I am not mistaken. However, I may be mistaken of the time. That is why I won't make a precise statement on that.

Q. Now, have you testified to three conversations last Friday night at which Mr. Velanty was present? A. Correct.

Q. One occurred when he brought around the Double C edition, is that right?

A. Correct. [1571]

Q. The next occurred at 10:20 or 10:30, is that right? A. Correct.

Q. What hour did the third conversation occur?

A. At 1:30, checking time.

Q. Now, the other conversation that you have testified to with Mr. Velanty occurred on a date in September of last year; is that right?

A. Correct.

Q. Who else besides Mr. Velanty was present at that September conversation

(Testimony of Charles Seklemian.)

A. I don't recollect if there were anyone.

Q. Well, there was only one conversation in September with Mr. Velanty, is that right?

A. There were two.

Q. There were two?

A. Sunday evening when he informed me of the forthcoming Tuesday night layoff, and the Tuesday evening conversation concerning resuming where I had left off on Monday evening, of commencing work on Wednesday night.

Q. Well, now, the only period of time that you weren't selling Examiners during that period in September was on Tuesday night, wasn't it?

A. Correct.

Q. That is, you sold on that corner all of Monday night? A. I did. [1572]

Q. Then you were on again on Wednesday night and continued thereafter to sell Examiners on that corner? A. Correct.

Q. Is that right? A. That is right.

Q. When was it that Mr. Velanty on that last occasion told you to report back to work

A. Are you referring to September of 1939?

Q. Yes, September, 1939.

A. The time was approximately midnight. It might have been a little later.

Q. Midnight on Tuesday night?

A. Correct. It might have been a little later. I don't recollect the precise time.

Q. Now, I think you said you had hung around that corner all of Tuesday night?

(Testimony of Charles Seklemian.)

A. I did not. I made my deliveries and I came back approximately at midnight.

Q. And that was Tuesday night?

A. Correct.

Q. I thought Tuesday night was the night you didn't work?

A. That is correct, but I did make my deliveries.

Q. What do you mean by "deliveries"?

A. Well, I have a certain number of deliveries around the neighborhood there, within about two blocks north and south [1573] of the boulevard.

Q. How many customers do you take care of on those deliveries?

A. Well, on the midnights I have approximately twenty-five. On the earlier editions I have approximately fifteen or eighteen.

Q. Well, that would be about forty-three regular customers, is that right? A. Correct.

Q. Has that been going on for quite some time?

A. Quite some time indeed.

Q. It is a condition that now prevails, does it?

A. That is right.

Q. Where are those forty-two or forty-three customers located?

A. Well, I have approximately eight at the Hotel Staten on Harold Way and Western.

Q. Well, they are people that you are well acquainted with, aren't they?

A. They are friends of mine.

Q. And sometimes when they are not able to

(Testimony of Charles Seklemian.)

pay for the paper you extend them credit, do you?

A. I have done it and I do, yes.

Q. In other words, you give them credit for several days running and then collect at the end of that time, is that [1574] correct? A. Yes.

Q. What edition do you deliver to those customers?

A. Well, some demand various ones. I have some that demand the doubles and the rest the midnights.

Q. Do any of them demand the Peach?

A. I have about four or five of them, south of Western Avenue that demand a Peach.

Q. About what time in the evening does the Peach edition reach your corner?

A. Well, that time varies; any time after 6:30, I have had it as late as approximately 7:15.

Q. What time does the Double C reach your corner? A. That also varies.

Q. Between what limits?

A. Well, from approximately 9:00 until 9:30; once in a while, once in a great while a little later than that.

Q. What time does the Triple C reach your corner?

A. Well, that varies to a large margin. I have gotten it as early as 11:40 and as late as 12:30.

Q. Do you handle any other newspapers besides the Los Angeles Examiner?

A. I handle the Times for the Times fellow on

(Testimony of Charles Seklemian.)

the corner as a courtesy to the public as well as to my fellow worker.

Q. You handle the Times laydown on the corner, or is it [1575] a laydown?

A. No, we handle one another's for courtesy to the public as well as to ourselves.

Q. But that is an arrangement between you and the Times newsboy? A. That is correct.

Q. For his convenience and your convenience?

A. That is correct.

Q. Well, now, do you handle any other newspapers besides the Times and the Examiner?

A. Well, during the period that the Herald boy is there I handle his. In case somebody calls for one of his, as well as the Times, so there won't be any confusion, to save time and save a trip for one of the other boys, and to serve the public to the best of my ability.

Q. Well, that is the result of a mutual arrangement between you and the other newsboys?

A. A cooperation, you might call it.

Q. A cooperation? A. Yes.

Q. You don't object to that arrangement, do you?

A. Well, as long as they cooperate with me I don't see why I should object.

Q. As long as they cooperate with you you like that kind of arrangement? [1576]

A. Well, I think that is about the best thing to do. That would be about the most normal thing to do.

(Testimony of Charles Seklemian.)

Q. By the way, that arrangement, that mutual arrangement or mutual cooperation with the Times newsboy and with the Herald newsboy, has been going on for the last two years, hasn't it?

A. To my recollection, yes.

Q. Do you handle any magazines?

A. I do not.

Q. Do you handle any other merchandise besides newspapers? A. No, sir.

Q. What other gainful occupation have you been engaged in during the last two years, other than selling newspapers? A. None other.

Q. No other gainful occupation?

A. No, sir.

Q. In other words, you haven't earned any money outside of the selling of newspapers?

A. No.

Q. Now, the money you earn in the sale of newspapers is the difference between what the papers are sold to you for and what the public pays you for the papers?

A. Yes, outside of a possible tip I might probably get from a customer, but that is something unforeseen.

Q. And gratifying? [1577]

A. I beg your pardon?

Q. And very gratifying?

A. Well, I believe if you were in my position I think you would accept it very gentlemanly.

Q. I feel sure of that. Now, was this beer garden

(Testimony of Charles Seklemian.)

man one of these customers you have described to me? A. Sure, he was.

Q. I beg your pardon? A. He was.

Q. Were these customers that you had furnished with newspapers out of the regular quantity of newspapers that was left with you by Mr. Velanty?

A. You are referring to my steady customers?

Q. Your steady customers.

A. That is correct.

Q. And, as I recall, you had about 42 or 43 of those steady customers, taking all editions together?

A. Well, I can't tell you the definite figures. That would be rather difficult, but approximately.

Q. Well, is that your best approximate recollection? A. Yes.

Q. Is that correct? A. That is correct.

Q. Now, during the last six months, in addition to those steady customers, how many Examiners have you sold on the [1578] average out at that location each night, and I am speaking of daily Examiners?

A. Well, we had a lull period for a time because the corner drug store was closed for approximately three months.

Q. Well, between what limits do you run?

A. Well, I have had a low average, as low as 85, and the most recent maximum, which was last night, outside of one other night which I couldn't consider as an average, has been 106.

Q. That was outside of these regular customers

A. No, sir, including the regular customers.

(Testimony of Charles Seklemian.)

Q. Now, you mentioned a drug store being closed. What does that have to do with the sale of papers?

A. Well, if your corner was dark, I believe that would have some effect, would it not?

Q. It has been shut, has it?

A. It has been but it is reopened.

Q. As a matter of fact, except on these occasions that you have referred to in your testimony, the Los Angeles Examiner, or the Los Angeles Examiner men never complained about your work out there, did they? A. Well, no one——

Q. (Interrupting) Say within the last two years.

A. Well, no one complained to me personally outside of this beer garden operator. [1579]

Q. Do you carry any Los Angeles Times when you serve these regular customers?

A. I take two a night on my own, yes.

Q. Well, you don't have any regular customers for the Times, do you?

A. I believe I have got two, yes.

Q. You give them credit sometimes, do you?

A. I haven't had the necessity for it as yet.

Q. They are pretty good pay?

A. Well, perhaps you might call it that. If there is no necessity for it, I believe you would call it that.

Q. Now, these regular customers, do you charge them five cents for each daily issue of the paper that you leave with them and ten cents for each Sunday? A. That is correct.

(Testimony of Charles Seklemian.)

Q. You don't make them a special rate, do you?

A. I do not, under those circumstances.

Mr. Hall: That is all.

Mr. Cosgrove: May it be stipulated, before we recess, Mr. Examiner, Mr. Mouritsen, that the testimony of the [1580] witness Charles Seklemian has no application to the Los Angeles Times case?

Mr. Mouritsen: It may be so stipulated.

Mr. L. B. Binford: And with respect to the Stockholders Publishing Company, the same stipulation?

Mr. Mouritsen: It may be so stipulated.

Mr. Compton: And with respect to the Los Angeles Evening Herald and Express, the same stipulation?

Mr. Mouritsen: So stipulated.

Trial Examiner Kennedy: I wish to return these cards now. The card reads: "Card of Authorization. I hereby designate and select the Newsboy's L. I. Union No. 75, C. I. O., to represent me for the purposes of collective bargaining with respect to rates of pay, wages, commissions, bonuses, hours of employment, and other conditions of employment." Blank for signature, and blank for address. "I sell papers for:" blank and blank. "Corner" blank and blank. "I understand that the above information is to be used in connection with Labor Board Cases."

I have examined these cards, 221 in number,

dated from the earliest date, May 14, 1940, to the latest, June 22nd, 1940. All of them have under the statement, "I sell papers for," the words "Examiner" or "Los Angeles Examiner."

I will return them to the Board's attorney. [1581]

After Recess

(Whereupon, the hearing was resumed, pursuant to recess, at 2:00 o'clock p. m.)

MIKE BARRETT

called as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and further testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Barrett, did you handle the Los [1583] Angeles Examiner during the beginning of the year 1939

A. 1939? Yes.

Q. Where did you handle it at that time?

A. The northwest corner of Fifth and Hill.

Q. (By Mr. Mouritsen) Who was your district man at that time? A. Red Butler.

Q. (By Mr. Mouritsen) And during the early part of 1939, Mr. Barrett, did you have what might be termed a quota from your Examiner district man? A. I did.

Q. Will you explain what that was?

(Testimony of Mike Barrett:)

A. Well, the first part of 1939 my quota was 65 at three cents. Over 65 was a cent, all over. They took the quota away from us a little later in 1939, the first part of 1939, and then they told us that we would have a quota back. That was about a month afterwards, so they come back with the quota and raised it to 85, which you couldn't make, and they said, [1584] "Now, we will see if you will make the quota."

Q. Well, who set your quota?

A. Red Butler.

Q. The Examiner district man. That is who I got the orders from.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Hall) When you say that Mr. Butler fixed your quota, you mean, do you not, that you learned what your quota was from Mr. Butler?

A. I didn't learn nothing. He told me.

Q. After he told you you knew what your quota was for the first time, didn't you?

A. I did.

Q. So that as a matter of fact, you don't know whether Mr. Butler or somebody else fixed the quota, do you?

A. I know what Mr. Butler told me and the district men have been in the habit of telling you what to do.

Q. And all you know is what Mr. Butler told you?

(Testimony of Mike Barrett.)

A. Well, I don't think there is anybody else told me outside of what I said. Butler told me. He seemed to be the boss of the district, so I took his word for it. I don't know where he got his orders.

Q. And did you start selling Examiners in 1939? [1585]

A. No, I sold Examiners since 1929.

Q. Have you been selling them at all times at that location?

A. No. I have sold all over the downtown district and part of the outer district.

Q. Now, the Examiners you sold were the Peach, the Double C and the Triple C?

A. They were that.

Q. And I am speaking now of the last two years.

A. I understood you when you spoke.

Q. And that has been true during the last two years?

A. That has been true ever since I worked for them.

Q. During the last two years what other employment have you had besides the sale of the Examiner?

A. Well, I am a carpenter by trade and sometimes I took an odd job in the daytime; very seldom, though.

Q. You are speaking of the last two years?

A. I am speaking of the last two years.

Q. Anything else besides carpentering?

(Testimony of Mike Barrett.)

A. That is all, in the last two years.

Q. Where do you live?

A. Redondo Beach, 2500 Blossom Lane.

Q. And during the last two years what other newspapers have you sold besides the Examiner?

A. Besides the Examiner? None, only a few Heralds that [1586] would be left if they had any left at night.

Q. Are you known as Mike Barrett?

A. I am.

Q. Didn't you testify previously at this hearing that you sold the Evening Herald and Express?

A. I do now. That is what I testified to. I don't sell the Examiner now.

Q. Oh, yes.

A. I got fired, in other words.

Q. When did you stop selling the Examiner?

A. While I was under the doctor's care, had just been operated on, and I came back——

Q. I asked you when you stopped selling the Examiner.

A. Well, it has been about three months ago.

Q. While you were selling the Los Angeles Examiner, did you sell any magazines?

A. I did.

Q. Which ones?

A. Liberty, Post, Look and Collier's.

Q. Any other magazines or newspapers?

A. That is all.

Q. Did you sell the Racing Form?

(Testimony of Mike Barrett.)

A. I did not.

Q. Those magazines you sold while you were located at the northwest Corner of Fifth and Hill Streets, is that right? [1587]

A. That is right.

Q. Now, when you said they took your quota away from you, what you meant to say was that they simply stopped selling you any papers at one cent?

A. I meant what I said before, that they took the quota away from me, and I paid for my papers regularly 3 cents all the way through.

Q. Yes. A. That is what I said.

Q. In other words, instead of paying 3 cents for a part of the quantity and one cent for the balance of the quantity, you were charged 3 cents for the entire quantity?

A. For the entire quantity, yes.

Q. Isn't that right? A. That is right.

Q. About when was it that they made a quota of 85?

A. I imagine around in March of 1939, some time around there.

Q. That is your best recollection?

A. That is my best recollection.

Q. Some time in March? A. In 1939.

Q. Isn't it true that at that time the sales of all papers jumped?

A. I don't know about that. [1588]

Q. You know as a matter of fact because of

(Testimony of Mike Barrett.)

war news sales of the papers were better on the downtown corners than they had been previously?

A. Well, yes and no.

Q. Well, I will accept your yes answer to that.

A. You will accept my yes and neither. One night they was good and one night they was bad.

Q. What were the averages?

A. The averages run around the regular night about the same as they always were.

Q. What do you mean by regular night?

A. The same as they had been previous to the war.

Q. The same as they were the year before?

A. Yes, on that corner. In fact, the year before they was better, because the two conventions was here.

Q. You have a feeling of hostility towards the Los Angeles Examiner? A. I do not.

Q. Your feelings toward them are entirely friendly?

A. They are mutual, as far as I am concerned.

Q. That is not what I asked you. I asked you if they were entirely friendly.

A. Friendly?

Q. Yes.

A. What do you mean by friendly? There is different mean- [1589] ings to that.

Q. You tell me what you understand by the term friendly.

A. My term is just the same as I have always felt about them.

(Testimony of Mike Barrett.)

Q. Tell me what that is.

A. I have got nothing against them if they ain't got nothing against me.

Q. How long have you been handling magazine sales?

A. Well, since I was on that corner at Fifth and Hill.

Q. When you were selling the Los Angeles Examiner at Fifth and Hill, did you have any regular customers?

A. Yes, I had regular customers. Show me a corner that hasn't.

Q. And in certain cases you would extend credit to certain of those customers?

A. No, sir; I extended credit to nobody. The Examiner required their money every night, so I required mine the same way.

Q. (By Mr. Hall) Well, did you check in more than once a night with the Examiner?

A. No. I checked in once a night. [1590]

Q. How many hours did you sell a day when you were selling the Examiners?

A. How many what?

Q. How many hours were you engaged in the sale of the Examiner each day?

The Witness: I can't give a definite answer, because they came out at different times.

Q. (By Mr. Hall) Well, speaking now of days when you sold the daily Examiner, what, in general and on the average, would be the number of

(Testimony of Mike Barrett.)

hours that you would be engaged in selling the newspaper? [1591]

The Witness: Average, seven hours on a week day, and twelve on a Sunday.

Q. (By Mr. Hall) What has it been since the first of the year?

A. I don't know, because I was sick and in the hospital, and when I come back I was fired.

Q. Well, now, let's see; when were you taken sick?

A. Right after the first of the year.

Q. January?

A. Around the first part of February some place.

Q. Well, you sold Examiners up until the time you fell sick, didn't you? [1592]

The Witness: Yes. I answered that "Yes."

Q. (By Mr. Hall) How long were you sick and not selling any newspapers?

A. Well, about four weeks.

Mr. Hall: That is all.

Redirect Examination

Q. (By Mr. Mouritsen) I believe you stated that you had some regular customers while you were operating on Fifth and Hill.

A. I did.

Q. Now, you became ill in February of this year; is that correct?

A. Yes; either the last of February or the first of March, somewhere around there.

(Testimony of Mike Barrett.)

Q. At the time when you ceased operating on the corner, did you continue to serve those customers?

A. No, I told the man that this guy here sent down to take—whatever his name is, Hansen here, sent down there to take the spot, I made occasion to show him where the deliveries were, [1593] which is two at the market and a couple in Leighton's lunch room and in the drug store, a couple in there, and I showed him where they were.

Q. And did you receive any money from your successor when you turned your regular customers over to him? A. I did not.

Q. Did you receive anything else of value?

A. I did not.

Trial Examiner Kennedy: Anything further?

Q. (By Mr. Mouritsen) During any of the time while you were on the corner did you carry any paper other than the Examiner in your hands or arms? A. No, sir, I did not.

Q. Did you shout any other paper than the Examiner?

A. No, sir, I did not. Just the Examiner and the headlines.

Mr. Mouritsen: Nothing further.

Mr. Hall: That is all.

Trial Examiner Kennedy: You are excused.

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony given this afternoon by the witness, Mr. Mike Barrett, has no application to the Los Angeles Times case?

Mr. Mouritsen: That may be so stipulated. [1594]

Mr. Compton: May we have the same stipulation on behalf of the Los Angeles Evening Herald and Express?

Mr. Mouritsen: It may be so stipulated.

Mr. L. B. Binford: And the Stockholders Publishing Company, Inc.?

Mr. Mouritsen: So stipulated.

GILBERT NAVARRO

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Navarro?

A. 146 West 58th Place.

Q. And you are a night district man for the Examiner? A. I am.

Q. You receive a regular pay check from them for that work? [1595] A. I do.

Q. And are Social Security and Unemployment Insurance deductions made from the check?

A. They are.

(Testimony of Gilbert Navarro.)

Q. What editions of the Examiner do you handle?

A. I handle the Peach and Double C and the Midnight.

Q. In what territory do you operate?

A. From Hill Street to Vermont on Pico, and from Pico out to Manchester and Vermont.

Q. Now, will you explain briefly what duties you perform as a district man for the Examiner, and I would suggest that you tell us what you do after you receive your papers from the plant and just take us through a typical day's work that you do.

A. Well, I deliver the papers to the corners where the boys are. I deliver them to the boys.

Q. The first edition that you receive is the Peach edition; is that correct? A. That is right.

Q. You receive that at the Examiner plant?

A. That is right.

Q. And about what time as a general rule do you do that, do you receive that?

A. Well, it all varies. It depends on what time the press runs. [1596]

Q. Between what hours do your generally receive it?

A. Between 6:15 and a quarter of seven.

Q. And then what do you do, distribute those around to the district? A. I do.

Q. And then re-cover with the later editions; is that correct?

(Testimony of Gilbert Navarro.)

A. I go out with the next later edition, yes.

Q. And between what hours do you generally check in at the Examiner?

A. What do you mean, myself?

Q. Yes.

A. Around 2:00 o'clock; 1:30 or 2:00 o'clock.

Q. Do you distribute papers to any other places or people other than to the newsboys?

A. Just to the newsboys.

Q. Do you make your collections each night from the newsboys to whom you have theretofore furnished papers? A. I do.

Q. And during what hours do you make those collections?

A. When they are ready to quit and go home.

Q. And during what hours is that?

A. Well, they vary. Some of them quit at 11:00 o'clock, 12:00 o'clock, 1:00 o'clock, 12:30, 1:30.

Q. Well, did the time that they quit depend upon the time [1597] that you checked them in?

A. When I arrived there, when I would get there.

Q. And they operate up until the time when you check them in; is that right?

A. That is right.

Q. How long have you been in that district?

A. Well, a little over three years.

Q. Do you understand the term "traffic spot"?

A. I do.

(Testimony of Gilbert Navarro.)

Q. Do you have any traffic spots in that district?

A. Yes. Boys in the safety zone.

Q. In other words, a traffic spot is—well, what is a traffic—what do you understand by a "traffic spot"?

A. A traffic spot is anybody who sells a paper to an automobile, I guess is traffic.

Q. And where do these boys operate?

A. Mostly in the safety zone.

Q. And, on occasion, on the white traffic lines?

A. They have none in the white.

Q. In your district they have none?

A. They have none.

Q. You mean they have no traffic lanes or no traffic lines?

A. No. My newsboys that hustle traffic are all in the safety zone.

Q. During the three years that you have been in this [1598] district have you put any boys in on traffic spots? A. What do you mean?

Q. Have you given any boys traffic spots?

A. I don't——

Q. Have you placed any boys on traffic spots?

A. Have I replaced them?

Q. I beg your pardon?

A. What did you mean? I didn't understand you there.

Q. Have you placed any boys on traffic spots during the three years you have been in this district?

(Testimony of Gilbert Navarro.)

The Witness: By "placed them on traffic spots," you mean put them in the safety zone?

Q. (By Mr. Mouritsen) Yes.

A. Certainly. They work in the safety zone and they work on the sidewalk. [1599]

Q. (By Mr. Mouritsen) Do you recall any specific boy that you have placed on a traffic spot within the last three years?

The Witness: Yes.

Q. (By Mr. Mouritsen) And where was the spot? A. At Pico and Vermont.

Q. And when did it occur?

A. I don't remember.

Q. Do you recall the approximate date when that occurred?

A. Yes. The place there I put a newsboy there about—I don't remember the date. A month ago or six weeks ago.

Q. Do you recall the boy's name? [1600]

A. No, I don't know his name.

Q. Is he still working there? A. Yes.

Q. Where did you have a conversation with him? Where did you have your conversation with him respecting the spot?

A. In the Examiner.

Q. Down at the alley? A. Alley.

Q. Was there any one else there?

A. I don't know.

Q. What did you say to him and what did he say to you?

(Testimony of Gilbert Navarro.)

A. Well, when I had my day off I came back, and he said he worked at Pico and Vermont last night and he would like to go out there and sell papers for me tonight—that same night.

Q. Well, your relief man had replaced him on the spot in the first place, is that correct?

A. That is right.

Q. Do you understand the term "main spot"?

A. Yes.

Q. Do you have any main spots in your district?

A. I have.

Q. How many? A. About two.

Q. And what do you understand by the term "main spot"? [1601]

A. Well, he—he has got the best corner of the lot. On the four corners he has got the best corner.

Q. That would be the main spot. The other spots are known as what? A. Off spots.

Q. And does each main spot newsboy count out papers to the off spot boys?

A. He gives them to them, yes, sir.

Q. In other words, you leave the papers for the entire corner with the main spot boys; is that correct? A. That is right.

Q. And what has the main spot boy to do with the papers that you leave with him?

A. Well, he distributes to the off spots, and will keep some for himself.

Q. Do you pay your main spot boys anything for doing that?

(Testimony of Gilbert Navarro.)

A. Well, I give them a few extra nickels and give them a little extra money.

Q. Where are those main spots?

A. Pico and Vermont.

Q. Who is the main spot boy on Pico and Vermont? A. His name is Wally.

Q. Is that all you know of him?

A. That is all I know.

Q. Where are the other main spots? [1602]

A. Washington and Vermont.

Q. Who is the main spot boy there?

A. George.

Q. George what? A. I don't know.

Q. Approximately how many newsboys are there in your district selling the Examiner?

A. Well, 20, 22.

Q. Do you have any school boys among that group? A. No, I have not.

Q. Are they older, more mature men?

A. They are all kinds of elderly men.

Q. Do they all work more than four hours a day? A. Sure.

Q. Do they all work five or more hours a day?

A. They work over five; they work six; some work seven.

Q. During the three years that you have been in that district have you put any different newsboys on those spots? A. I have.

Q. Approximately how many?

A. I wouldn't know.

(Testimony of Gilbert Navarro.)

Q. Do you have any idea?

A. I have no idea how many newsboys I have changed or that have left the corners there. I can't recollect.

Q. Well, during the past year do you have any idea how many [1603] changes have taken place?

A. Well, about three or four.

Q. And the year before?

A. I don't remember.

Q. Well, was it any more than three or four?

A. I can't tell you. I don't remember.

Q. You have no recollection at all as to the number? A. I can't remember that.

Q. Was it more than one?

A. It probably was more than one.

Q. Now, was it less than 20?

A. I don't know.

Q. Was it less than 100?

A. Well, it probably is less than 100.

Q. Is there any way you can fix the number more definitely between one and 100?

A. I can't remember that.

Q. During the three years that you have been on the corner, have you been requested by the office from time to time to turn in a list of the places where you leave papers and the approximate number you leave there, for your district?

A. I have.

Q. And has that continued up to the present time?

(Testimony of Gilbert Navarro.)

A. I don't remember the last one I turned in. I don't know, it has been quite a while ago. [1604]

Q. Well, it has been less than a year, hasn't it, Mr. Navarro? A. It has.

Q. And is there any way you can fix how much less than a year it has been?

A. Well, it has probably been three or four months ago, or five months ago.

Q. And how do you receive the copies of the Sunday edition of the paper?

A. Well, what do you mean?

Q. Do you understand the use of the term "stuffing"? A. I do.

Q. Will you tell us what that term means, what you understand by it?

A. Well, it means that the papers come in sections instead of together.

Q. And do you receive the Sunday copy of the paper, your Sunday copies of the paper, in sections so that you have to stuff them?

A. No, I don't have to stuff them.

Q. Do you receive them in sections?

A. I receive them in sections, two editions.

Q. And the operation of stuffing is merely placing one section within the other, isn't that right?

A. That is correct. [1605]

Q. Well, if you receive them in sections, how are they stuffed?

A. The comic sheet is on the inside.

(Testimony of Gilbert Navarro.)

Q. Do you receive them in sections?

A. Yes.

Q. Now, how are your papers that you receive stuffed?

A. The ones that I receive? I don't know how they are stuffed. The magazine and color section in one section, and the news section in another.

Q. You turn them over to the newsboys in sections; is that right? A. That is right.

Q. And what do you tell the newsboys, if anything, regarding the stuffing of those papers?

A. I don't tell them anything.

Q. You don't recall having told any newsboy anything about stuffing the papers?

A. No. I guess they have been doing it for years and years. They know what to do with them, I guess.

Q. Even the two or three new ones you have put on in the last year——

A. I never told nobody to stuff a paper.

Q. You don't recall that? A. No, sir.

[1606]

WILLIAM JACKSON

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Are you a night district man for the Examiner? A. Yes, I am.

(Testimony of William Jackson.)

Q. (By Mr. Mouritsen) Now, how long have you held that position?

A. Well, about three years.

Q. And what are the boundaries of your district?

A. Well, from 11th Street to Florence, and from Figueroa to Main.

Q. During the period that you have held that district, Mr. [1607] Jackson, have you put any newsboys on any of the spots in that district?

A. No, I don't put any newsboys on any corner. If I have a spot open, if a fellow asks me if I have anything open, I will tell him where it is, and I sell the newspapers to him and he goes out there himself.

Q. And do you recall any specific conversation that you have had with a newsboy prior to the time when he has gone out to his spot?

A. Not necessarily. I know most every newsboy that comes in, yes.

Q. Well, you don't recall any specific conversation with any of the boys you——

A. Before I send them out or before I tell them where to go?

Q. Yes. A. No, sir.

Q. Do you recall having put a man named Latham on one of your spots?

A. I don't know anyone by that name, sir.

Q. Mr. Latham, will you stand up? Do you recall having put this man on one of your spots?

(Testimony of William Jackson.)

A. I don't remember.

Q. You have no recollection of that?

A. Unless it has been quite a long while ago. I remember the face, but I don't remember ever putting him on any spot [1608] or telling him to go to any spot.

Q. You have absolutely no recollection of any conversation with that man?

A. I have not, no, sir.

Q. (By Mr. Mouritsen) Mr. Jackson, I will ask you if you recall a conversation with Mr. Latham in the first week in May, 1939, at the Examiner alley at which you and he were present.

A. I don't remember having any conversation in connection with Mr. Latham; and I don't remember —excepting I remember his face.

Q. And if at that time, namely, about the first week of May, [1609] 1939, you recall having a further conversation with him out at the corner of Washington and Figueroa, at a vegetable market, at which you and he alone were present?

A. Washington and Figueroa? I beg your pardon, Mister, but there is no vegetable market at Washington and Figueroa. There is no vegetable market at Washington and Figueroa.

Q. Florence and Figueroa?

A. There is one at Florence and Figueroa, but I don't remember the man at any time. I don't remember having any conversation with him, no.

Q. And do you recall at that time and place—

(Testimony of William Jackson.)

Mr. Hall: This is the last one, is it?

Mr. Mouritsen: Yes.

Q. (By Mr. Mouritsen) That is, at this vegetable market at Florence and Figueroa, that you told him to make all the places around the market and to work the white lines?

A. I don't remember ever talking to the man about any corner at all.

Q. You have no recollection of it?

A. I have no recollection of it, no, sir.

Q. And then if several days after this first conversation you did not have a further conversation with him in the Examiner alley, you and he alone being present? [1610]

The Witness: I don't recall at any time.

Q. (By Mr. Mouritsen) You do not recall that?

A. I don't recall.

Q. And if at that time you did not say to him in substance as follows: That "I am going to put you on the corner of Washington and Figueroa, the main spot, and I want you to get out and hustle on the white lines and beat the Times boy"?

A. I don't recall any conversation with the man at all. I have answered that five or six times now.

Q. And if on the corner of Washington and Figueroa several days after the second conversation you did not have a further conversation with him, you and he being alone, in which you said to him in substance, as follows: That you said, "I am going to put an off spot boy on the other corner," and that

(Testimony of William Jackson.)

Mr. Latham said, in substance or effect, that he did not want you to place another boy on the corner inasmuch as that would deprive him of sales, and if you did not at that time state in substance: "It's not me; it's the company"; and if you did not further at that time tell him that he was to supply the papers to the off spot boy; that he stated that he did not desire to because it would cut down his sales; if you at that time did not tell him that the off spot boy was to [1611]— work the safety zone and that he, Latham, was to see that the boys worked in the safety zone? Do you recall having such a conversation?

A. Him or no one else. I never tell them anything like that.

Q. The question is, do you recall having such a conversation? A. No, sir. [1612]

DARRAL COLE

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Cole?

A. 628 North Orange Street, Glendale.

Q. What is your business or occupation?

A. Circulation representative for the Los Angeles Examiner.

(Testimony of Darral Cole.)

Q. How long have you held that position?

A. Approximately seven years.

Trial Examiner Kennedy: For the Examiner, was that?

The Witness: That is right, sir.

Trial Examiner Kennedy: L. A. Examiner.

Q. (By Mr. Mouritsen) And in that position will you please state what your duties are?

A. Well, I have worked at a number of different jobs. My first job there, I was in charge of junior sales for country and suburban circulation.

Q. Well, confining your attention to the years 1938 and '9, will you state what your duties were?

A. One of my duties was a checker on street sales and A. M. independents in the morning. Another was verification department. [1613]

Q. Of what did your work as a checker in the street sales consist? What did you do?

A. Well, we traveled—I traveled the district at night to see that the district was represented by our newspapers, that the sales outlet on the district were covered as they should be.

Q. Did you make reports covering your investigation and what you found?

A. Yes, sir.

Q. To whom did you make those reports?

A. Mr. Arthur Hampson.

Q. What points would you check on?

A. Well, if I thought there was a corner or spot that should be represented by some kind of representation there, I put it in the report.

(Testimony of Darral Cole.)

Q. What else did you do?

A. Just rode the district and saw that the corners that had hustlers, that hustlers were in the corners, and on the job.

Q. What do you mean by "seeing that they were on the job"?

A. Just riding around and observing.

Q. Well, you stated that you first saw they were present and then that they were on the job. What did your observation cover besides the fact that they were present?

A. Well, by way of determining that, I would see that they were selling the Examiner. [1614]

Q. And did you from time to time during that period find that the boys were not selling the Examiner?

A. If I interpret your question right—I don't know just exactly what you mean.

Q. Well, you have testified, Mr. Cole, that your duties were to ride the districts—I presume that is districts of the night district men, is that correct?

A. That is right.

Q. To see that the newsboys were present on the corners and to see that they were on the job and to see that they were selling the Examiner. Now, did you always find that the newsboys were present on the corners?

A. No, I didn't always find that condition to exist.

Q. When you found that condition not to exist, what did you do as part of your duties?

(Testimony of Darral Cole.)

A. Well, it was part of my duty to find out how long they were off of the corner.

Q. And then what did you do when you found that out?

A. Just make a report of it and turn it in.

Q. To whom? A. Mr. Hampson.

Q. Now, part of your duties was to see that they were on the job. Did you always find that the newsboys were on the job during that period while you were— A. In the majority of cases. [1615]

Q. In the cases where you did not find that they were on the job, what did you do in the line of your duty?

A. I just observed the length of time that they were off of the corner from the time I arrived there until the hustler was back on the spot again.

Q. Then what did you do?

A. Made a report of it and turned it in to my superior.

Q. And in the event—strike that.

During that period did you find that the newsboys were always selling Examiners in the various districts?

A. The Examiner newsboys I found were selling the Examiner.

Q. You found that in all cases?

A. Well, there was some cases that newsboys handle both periodicals at night, the newspapers, the Times and Examiner.

Q. And what did you do with reference to news-

(Testimony of Darral Cole.)

boys handling both papers in the line of your duty?

A. I did nothing about it.

Q. There are certain newsboys who sell only the Examiner; isn't that correct?

A. That is correct.

Q. And did you always find that they were selling the Examiner?

A. In the majority of the cases, although I believe there is an arrangement between hustlers on the corners where one will handle the other's newspapers as an accommodation. [1616]

Q. I don't want what you believe. I move to strike that. I would like to know if you always found that the newsboys were selling the Examiner.

A. To the best of my knowledge, yes.

Q. Well, then, Mr. Cole, is it your testimony that your duties involved, and the only reports that you ever made concerning newsboys' operations were regarding the times that they were off the corners?

A. As far as right down to the newsboy operation, yes, and then any spots that I thought there should be representation.

Q. And during that period, that is, in 1938 and 1939, you made no other reports regarding the work or manner of work of the newsboys in the districts you covered?

A. To the best of my recollection, no.

Q. Now, with reference to the morning men, morning district men, what did your duties entail during that period, that is 1938 and 1939?

(Testimony of Darral Cole.)

A. Well, the morning men, termed A. M. independents, handle the newsstands and drug stores, and as the checker's job in the field, we were supposed to check the stores and the laydown racks, otherwise known as coin racks, to see that they had papers in them up until 12:00 o'clock noon.

Q. And the morning men also supply certain newsboys, do they not? [1617]

A. To the best of my recollection, they do.

Q. And with reference to the operations of the newsboys who work in the morning, what did your duties entail?

A. Well, I was never very interested in the newsboys in the morning. As far as the A. M. independent check-up was concerned, my duties were mainly to see that the stores and stands had papers.

Q. And you recall no instance of ever having reported regarding the manner of display of any of those newsboys in the morning?

A. I don't recall. It is a possibility.

Q. Did you check also in the district that is covered or handled by Bill Seebolt?

A. I have checked the district covered by Bill Seebolt but not on his district. I was more concerned with the newsstands.

Q. Well, you yourself have not covered the Bill Seebolt work in your check, is that correct?

A. I have not.

Q. How many other checkers are there?

A. There is one or two besides myself.

(Testimony of Darral Cole.)

Q. What are their names?

A. Peters—Mr. Peters and Mr. Grimm.

Q. And do they do the same type of work that you do? A. I believe they do. [1618]

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Hall) Did these checkups that you referred to occur at daily intervals or at longer intervals?

A. I could give two or three answers to that.

Q. Explain the method, will you, Mr. Cole?

A. On a checkup—you are referring to the night checkup?

Q. Well, let's take the night checkup first.

A. On the night checkup as a rule we cover—just ride a complete district to see how the display was, if the hustlers were on the job.

Q. Well, would you do that once a month or twice a month or how often?

A. Well, sometimes, maybe it would run, maybe two weeks daily.

Q. Then you would refrain from making a check for a certain period?

A. Yes. Might go over to the morning and check up on the A. M. independents.

Q. As a matter of fact, how long is it since you have made a night checkup?

A. I would say approximately two or three months?

Q. During the course of the night checkup it

(Testimony of Darral Cole.)

was your duty, was it not, to inspect the territory with a view to finding places, if there were such, where a newsboy vendor of papers [1619] might be profitably located? A. That is right.

Q. During the course of your night check ups did you talk to Los Angeles Examiner newsboys?

A. I don't recall.

Q. Did you ever during the course of your night checkups or your day checkups ever give any orders or instructions to any newsboys? A. Never.

Q. Well, then, as I understand it, in both the course of the night checkups and the day checkups you would simply observe; is that right?

A. That is right.

Mr. Hall: That is all.

Trial Examiner Kennedy: Is there anything further of this witness?

(No response)

You are excused.

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony of the witnesses Gilbert Navarro and William Jackson and Darral Cole, of any of them, have no application to the Los Angeles Times case?

Mr. Mouritsen: That may be so stipulated.

[1620]

Mr. Compton: May the same stipulation be made on behalf of the Los Angeles Evening Herald and Express?

Mr. Mouritsen: It may be so stipulated.

Mr. L. B. Binford: And the same stipulation with respect to the Stockholders Publishing Company?

Mr. Mouritsen: Yes, so stipulated.

ERNIE JAMES LATHAM,

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Latham? A. 579½ North Boylston.

Q. That is in the city of Los Angeles?

A. Yes.

Q. Have you ever sold the Los Angeles Examiner? A. I have.

Q. When did you first start to sell the Los Angeles Examiner?

A. About the first week of May, 1938.

Q. And where did you start to sell?

A. Eighth and Main.

Q. Did you obtain that spot from anyone? [1621]

A. Yes, I did.

Q. From whom?

A. Abie Peters, I believe they call him.

Q. And who was he?

A. He was the district man for the Examiner, the downtown.

Q. Did you have a conversation with him prior to the time when you went out to the spot?

(Testimony of Ernie James Latham.)

A. Yes, I did.

Q. Where did that conversation take place?

A. In the alley at the Examiner, where the district men meet the newsboys.

A. And who was present?

A. Well, I don't just recall. There were several fellows around, but there was no one but Abie and I had the conversation.

Q. Will you state what Mr. Peters said to you at that time?

Mr. Hall: Would you place the time of the conversation, counsel?

The Witness: In the first week of May, 1938.

Q. (By Mr. Mouritsen) Will you state what you said to Peters and what Peters said to you?

A. I asked him did he have a spot for me. He said, "Yes." Told me to go to Eighth and Main.

Q. Did you go to Eighth and Main?

A. I did. [1622]

Q. Did you have a further conversation with him at that place? A. Yes, I did.

Q. How long after this first conversation did this second one take place?

A. When he brought the next edition, the Double C.

Q. And where did it take place?

A. On the corner of Eighth and Main.

Q. Was anyone else present other than you and Mr. Peters? A. No.

Q. Will you state what Mr. Peters said to you and what you said to him?

(Testimony of Ernie James Latham.)

A. I told him, I said, "I can't sell enough to eat on here."

He said, "Stay with it and I'll guarantee you a dollar a night."

In other words, if I sold 20 papers I kept the dollar.

Q. And was that about all the conversation that took place at that time?

A. Well, no; he told me to come to, I believe it is the cafe there—I believe it is the Belmont, if I am not mistaken, at Fifth and Main, to check in to him at 12:30.

Q. And anything else? Do you recall anything further that he said at that time?

A. No, I do not.

Q. To refresh your recollection, did he say anything [1623] regarding the Times at that time?

A. Yes; he told me not to handle it.

Q. And after that time did you go and check in to that place that he had designated?

A. I did.

Q. After that time did he ever have to make up the—did he have to give you money so that you received a dollar a night on that spot?

A. Yes. Once.

Q. How long did you remain on that spot?

A. Oh, I should say probably five or six, maybe seven weeks.

Q. And then did you operate upon another spot?

(Testimony of Ernie James Latham.)

A. No. He taken me off that spot and put me at the bus station at Sixth and Main.

Q. Did you have a conversation with him prior to that time when he put you on this spot at Sixth and Main? A. Yes.

Q. Where did that conversation take place?

A. That was on the corner there when he—at night when he came to work. "Why," he said, "I am going to give this spot back to the lady that has had it. You will have to come up there if you want one."

So he put me in the car and we rode around to see if he could find another spot, and he couldn't find one, and he [1624] says, "That's the only one I have got, here at the bus station."

And I hollered about it and I didn't want to take a spot I wouldn't make even a dollar, and knew that I wouldn't sell five papers there, not even on a corner, and he said, "Go ahead and I'll give you 15 papers and 50 cents to stay there."

Q. And how long did you stay on the spot at Sixth and Main?

A. About the third night I quit.

Q. Now, after that time did you ever start to handle the Examiner again? A. Yes, I did.

Q. About when was that?

A. Well, about Thanksgiving of 1938.

Q. What spot did you receive then?

A. Florence and Figueroa.

Q. Did you see anyone prior to the time when you received that spot? A. Yes, I did.

(Testimony of Ernie James Latham.)

Q. Whom did you see then?

A. Mr. Jackson, district man for that district.

Q. And did you have a conversation with him prior to the time that you went out to the spot?

A. I did.

Q. Where did that conversation take place?

[1625]

A. In the alley down at the Examiner.

Q. And what was the approximate date of that conversation?

A. Well, it was along about Thanksgiving. I don't remember exactly the date. I can't tell you.

Q. Was anyone else present other than you and Mr. Jackson?

A. Well, there were several district men and newsboys around, but I don't recall any of them standing there listening at our conversation.

Q. What did you say to Mr. Jackson and what did he say to you?

The Witness: I asked him did he have a spot for me and he said yes.

Q. (By Mr. Mouritsen) And what else was said at that time?

A. Well, at that time there wasn't anything until we got to the corner.

Q. Did you have a further conversation with him there? A. Yes, I did.

Q. And what was the corner where you had the conversation, [1626] the second conversation with him? A. Florence and Figueroa.

(Testimony of Ernie James Latham.)

Q. Now, will you state what Mr. Jackson said to you there and what you said to Mr. Jackson?

A. He told me to work the market around there and watch the corner, and also work the white line.

Q. I see. Do you recall anything further that was said at that time?

A. Yes; he said he would have a better spot for me.

Q. Was that about all the conversation that took place at that time?

A. At that time, yes, that is the first night.

Q. And how long did you work on that spot?

A. Oh, I would say approximately a couple of weeks maybe, or maybe not that long. I don't recall just exactly, maybe three weeks. I don't recall exactly.

Q. And then did you receive another spot?

A. I did.

Q. And from whom did you receive this other spot? A. Mr. Jackson.

Q. Where was the other spot?

A. Florence and Broadway.

Q. And prior to the time when you worked on Florence and Broadway, did you have a conversation with Mr. Jackson? [1627]

A. Yes. He still said the guy was off that night at Florence and Broadway.

The Witness: He told me I could work that spot that night, that the man was off, and that he would give me another one the next night, a better spot.

(Testimony of Ernie James Latham.)

Q. (By Mr. Mouritsen) And how long did you work the Broadway and Florence?

A. One night.

Q. Then did he move you to another spot?

A. He did.

Q. And what spot was that?

A. Washington and Figueroa.

Q. And prior to the time when you started working at the spot on Washington and Figueroa, did you have a conversation with Mr. Jackson?

A. Yes, that night.

Q. Where did this conversation take place?

A. On the corner of—as I checked in, at Florence and Broadway.

Q. Was anyone else there? [1628]

A. Well, the Times boy was there.

Q. Do you know his name? A. No, I don't.

Q. Will you state what Mr. Jackson said to you and what you said to Mr. Jackson on that occasion?

A. Well, I asked him was he sure he had the other spot, and he said, "Yes," to "go to Washington and Figueroa tomorrow."

Q. Did he say anything regarding the type of spot it was? A. A main spot.

Q. Do you recall anything further he said regarding this spot at Washington and Figueroa?

A. Well, he said I should build it up to a good corner; if I kept myself neat and clean, I should be able to build it up to a good corner.

Q. Do you recall anything further that he said at that time?

(Testimony of Ernie James Latham.)

A: Not that night, but I met him in the alley the next morning or the next afternoon where we had another conversation.

Q. And who else was present, if anyone, at this conversation the next afternoon?

A. Well, the same, newsboys and district men, but I don't recall of any of them listening to our conversation.

Q. What did you say to Mr. Jackson and what did he say to you? [1629]

The Witness: I told him I was ready for that main spot and he said O. K. He told me to walk down to Grand and Washington and I would pick up my papers there, and then I would leave three papers for an old man there, or five papers, I believe it was, I left with an old man there, and then I would go to my corner at Washington and Figueroa, and from there on he would bring the papers himself.

Q. (By Mr. Mouritsen) Did he say anything at that conversa- [1630] tion regarding the place where you were to work?

A. Yes, he did. He said for me to watch the Times guy and to be on my toes. If I didn't, he would run ahead of me and sell papers.

Q. Well, do you recall anything further that he said in that conversation?

A. Yes, that I should work the white lines.

Q. Anything else? Do you recall anything else he said at that time?

(Testimony of Ernie James Latham.)

A. Not at that time, no, not in that present conversation.

Q. Well, after that conversation did you have any further conversation with him regarding your operations at Washington and Figueroa?

A. I did.

Q. How long after the—

A. Well, every night almost we would have some kind of a conversation, because I would ride in with him.

Q. Well, when was the next conversation that you can recall regarding your operations on the corner?

A. Well, about three or four nights after that, why, I was a little short on the Peaches, and I had sold out all but one and I was sitting on the fire plug waiting for him, and he wanted to know what I was sitting there for and why I wasn't up working.

Q. Who else was present at that time? [1631]

A. The other Times boy was standing there.

Q. You say the other Times boy?

A. The Times boy, the other newsboy that sells the Times.

Q. And anyone else?

A. Well, there were two customers standing there waiting for a Double C at this time.

Q. What did Mr. Jackson say to you and what did you say to Mr. Jackson?

A. Well, he said—he wanted to know why I was sitting there and why I wasn't up working, that the

(Testimony of Ernie James Latham.)

office would be on him if they catch me sitting down.

I said, "Well, I only have one and the customers don't want it; they want the Double C and they are waiting for it so I can't shove it down his throat."

Q. Is that all the conversation that took place at that time?

A. Well, yes, at the present time, only he told me to go ahead and get out there and sell those papers to them.

Q. Did you ever have a conversation with Mr. Jackson regarding your lunch hour or the time that you were to take off for lunch? A. Yes, sir.

Q. Or for your meal?

A. He came up once and I was in the drug store having a sandwich. And he was bringing a later edition and I was in [1632] there having a sandwich and a cup of coffee.

Q. What occurred then?

A. Well, he blew his horn and naturally I jumped around to get my papers and he wanted to know what I was doing and I told him I was eating.

Q. Wait a minute. About how long after you started on Washington and Figueroa did this conversation take place?

A. Oh, about a week or so, or a couple of weeks.

Q. And at the time when it took place was anyone else present other than you and Mr. Jackson?

A. This conversation of my eating?

Q. About your eating.

A. Yes, the Times newsboy was there.

(Testimony of Ernie James Latham.)

Q. Now, will you state what Mr. Jackson said to you and what you said to him?

A. Well, he said I should get a sandwich and stay outside on the corner.

Q. Do you recall anything further that was said at that time?

A. Yes. That same evening he told me he was going to put the off spot fellow on my corner.

Q. When did that conversation occur?

A. Yes, that same evening.

Q. And where did it occur?

A. Right there at Washington and Figueroa. [1633]

Q. Was anyone else present at that time?

A. Yes. I think the Times boy was still standing there. I am not positive.

Q. (By Mr. Mouritsen) What did Mr. Jackson say to you and what did you say to Jackson regarding this off spot boy?

A. I asked him not to put him on because it takes more of my sales; that people instead of coming across the street would stop there and get them from him instead of coming across to me.

Q. What did he say about it then?

A. He said, "I can't—it's not me; it's the company that wants the boy there and I have to put him there."

Q. And did he put the boy there?

A. Yes, he did.

Q. At that time did he say anything to you regarding giving this off spot boy papers?

(Testimony of Ernie James Latham.)

A. Yes, I was to give him papers—I was to collect—I was responsible. If he takes part of it, well, it's my hard luck; I will have to pay, * * * [1634]

Q. (By Mr. Mouritsen) At that conversation did Mr. Jackson say anything to you regarding the place where the off spot boy was to work?

A. Yes.

Q. What did he say regarding that?

A. In the safety zone. There was a safety zone there for the street car on his corner, on the off spot corner, and there wasn't over on mine, only white lines; no safety zone.

Q. How long did you continue to operate on that corner?

A. Well, I should say up until—I just don't recall. It was after the 4th of July.

Q. Of what year? A. 1939.

Q. During that period did Mr. Jackson ever give you anything other than the Examiner to sell?

A. Yes, he did.

Q. And what was that?

A. Smokey Moore's Green Sheet. [1635]

Trial Examiner Kennedy: How long did you sell it?

The Witness: From a few weeks I was on the corner until he fired me.

Trial Examiner Kennedy: Until he what?

The Witness: Until he fired me.

Trial Examiner Kennedy: How long a period of time was that?

(Testimony of Ernie James Latham.)

The Witness: Oh, maybe a couple of months; three months, something like that.

Trial Examiner Kennedy: When did you say he fired you?

The Witness: Well, it was some time in July, after the 4th.

Trial Examiner Kennedy: Last year?

The Witness: 1939. [1637]

The Witness: I said it looks the same. I can't remember exactly. I know it has "Smokey Moore's Little Green Sheet."

Trial Examiner Kennedy: Looked something like that?

The Witness: Yes, but it had some writing on there, "Little Green Sheet." I don't remember seeing the Horse Sense that was on there, because I don't remember everything. I didn't read them too close.

Q. (By Mr. Mouritsen) Now, when did Mr. Jackson first start to supply you with the Green Sheet?

A. Well, when the races started.

Q. Where was that? The races where? At Santa Anita or——

A. Yes, races at Santa Anita, yes, is where I got it. Sometimes along maybe when the races has been going for a while, because I know—I don't know what time the races started—I didn't keep track of the races, because I don't know what time they started, but I know the races were going on when I got the Green Sheet.

(Testimony of Ernie James Latham.)

Q. (By Mr. Mouritsen) Well, approximately how long had you been on the spot at Washington and Figueroa before Mr. Jackson started to supply you with the Green Sheet?

A. Well, I can't recall. I don't remember the exact date [1638] I had been there a while, but just when I can't tell you.

Q. Well, can you fix the date approximately? Had you been there a week or two weeks, or—

A. No, it is after the first of the year.

Q. Well, can you fix approximately how long it was after the first of the year—wait a minute. The first of the year of what year?

A. 1939, after the first; it was along maybe later in the—oh, maybe in March or April, I don't know. It wasn't in April because Santa Anita was not running then; it was Hollywood running then.

Q. Can you fix the date more definitely than between March and—

A. I should say some time in January, maybe. January or—yes, maybe it was January some time.

Q. Did you have a conversation with him when he first supplied you with this?

A. Yes; * * * [1639]

Q. (By Mr. Mouritsen) Now, Mr. Latham, will you please state what Mr. Jackson said to you and what you said to Mr. Jackson at the time when he first gave you the Green Sheets?

Mr. Hall: That was placed in July of 1939, wasn't it? Or was it? Will you place the time so the record will be clear about it?

(Testimony of Ernie James Latham.)

Mr. Mouritsen: I believe the time has already been placed as the beginning of 1939.

Mr. Hall: All right.

Q. (By Mr. Mouritsen) Will you so state, Mr. Latham?

A. I don't remember exactly. It is somewhere maybe in March, April or May, I don't know; maybe in January, too. I don't remember. I don't know for sure. I have forgotten. It has been some time and I don't remember so well on that, just what time it was he gave them to me.

Q. Well, will you state what he said to you when he first gave them to you?

A. Yes. He says, "They cost 19 cents, you make 6 cents on each one." I sell for 25 and buy from him for 19.

Q. During the time while you were operating on Washington and Figueroa, what time did you report on week days?

A. Well, maybe I have to be over there about 5:30 at Grand and Figueroa, or Grand and Washington. That is where I pick the papers up then. I go there and pick the papers up about 5:30. From then on—maybe they are later getting there. [1640] Maybe it was almost 6:00 o'clock sometimes before they would get there.

Q. It was your practice to pick up the first edition at that place? A. Yes.

Q. Then you would carry them to your corner?

(Testimony of Ernie James Latham.)

A. Yes; and from then on he would service me at the corner.

Q. And what time did you report on Saturdays?

A. Well, I have to report about two o'clock at the alley on Saturdays because he wants to be sure I was there.

Q. Well, did you ever have a conversation with him regarding the time you were to report on Saturdays?

A. Yes, the first Friday night of the week I had worked at Washington and Figueroa, and he said, "You be in the alley in the morning."

Q. Where did this conversation take place?

A. As we were going in. I ride in with him to the alley every night to check up.

Q. Was there anyone else present?

A. There was a fellow present but I have forgotten his name, and I don't see him no more selling papers anywhere. I haven't seen him in some time.

Q. Will you state what Mr. Jackson said to you and what you said to Mr. Jackson?

A. He said for me to be down there about 2:00 or 2:30 in [1641] the alley there on Saturday afternoon because he wanted to be sure I would be there, and I told him all right, I would be there, and I was.

Q. Did you report the next day? A. I did.

Q. And did you have a conversation with Mr. Jackson at that time?

A. At the time I reported there?

(Testimony of Ernie James Latham.)

Q. Yes. A. Yes. I have to take—

Q. Well, was anyone else there?

A. Well, whoever the off-spot fellow that was there, he told me to check this fellow in he had on the off-spot. That is before he put a steady off-spot, that one for Saturday. He had another off-spot fellow. Then he put this fellow on and I have to stuff the sheets and check him out, and then if he takes a powder, I have to pay it.

Q. Well, on that particular Saturday how did you receive the papers that you were to sell?

A. Well, they brought them out in a truck and one bundle maybe would be the comic sheets and another bundle would be the news and another would be the sports and stuff, and then you have to make all of them together.

Q. Well, did Mr. Jackson say anything to you about putting them all together? [1642]

A. Yes.

Q. What did he say?

A. He said I have to stuff my sheets. I should stuff them all and give the other off-spot fellow his, five at a time I should give him.

Q. Did you stuff not only the papers you got but the ones the off-spot boy received?

A. Yes, I stuffed them all; for the offspot boy, too.

Q. Did Mr. Jackson pay you anything for that work? A. No.

Q. Now, prior to the time when you ceased to

(Testimony of Ernie James Latham.)

work on that corner did you have a conversation with Mr. Jackson regarding your leaving?

A. I did.

Q. Where did that conversation take place?

A. That was in the alley on Saturday afternoon when I reported for work.

Q. How can you fix the approximate date?

A. Well, it was in July. I don't know the date.

Q. July of what year? A. 1939.

Q. Who were present?

A. Well, this—there were several newsboys and the district men, but I don't recall any of them listening in.

Q. State what Mr. Jackson said to you and what you said to [1643] Mr. Jackson.

A. Well, he begin to laugh a little and he says to me, "Well, I am not going to use you. I hear you are going to take a powder on me so I couldn't use you."

I asked him who told him, and he said, "Oh, never mind. I know lots of fellows tell me things you don't know nothing about."

I asked him why he didn't tell me in time where I could get another spot because the trucks were leaving, and he didn't say anything.

Q. And after that conversation you no longer worked on that spot? A. That is right.

Mr. Mouritsen: You may inquire.

(Testimony of Ernie James Latham.)

Cross Examination

Q. (By Mr. Hall) Since this occasion you have last mentioned have you sold Los Angeles Examiners? A. No, I have not.

Q. Well, now, referring to Board's Exhibit No. 20, which is the Green Sheet, I understood you to say that Mr. Jackson first gave you those Green Sheets for sale some time either in March or April or May or January, 1939; is that right?

A. I said I didn't remember at the time he gave them. It may have been along there.

Q. It may what? [1644]

A. It may have been along like that, some of those months, I don't remember just what time I got them.

Q. Well, how was it that you remembered a few minutes earlier in the questions put to you by the Trial Examiner that it was a few weeks prior to the date in July when it was given to you for the first time? A. I did not say that.

A. I testified from the time he brought the sheets that I started to handle them. I still say that.

Q. What have you been doing since July, 1939?

A. Selling papers.

Q. What papers?

A. Well, I sold the Hollywood Tribune for a while and the People's World and most any publication I could get to sell. The Times.

Q. Now, are you selling any newspapers now?

(Testimony of Ernie James Latham.)

A. I am.

Q. What paper?

A. The People's Daily World. [1645]

Q. Are you the man that stood up in the back of the room at the time a witness named Jackson was testifying this afternoon?

A. When they called for Latham, I'm the fellow. Maybe somebody else stood up. I was there once when they called my name.

Q. Well, when they called for Mr. Latham, you stood up? A. I did.

Q. You had a good look at Mr. Johnson who was on the stand at that time? A. I did.

Q. Is he the Mr. Jackson with whom you had these conversations to which you have testified?

A. Yes, he certainly is.

Q. What else have you done during the last year except sell newspapers?

A. Well, that's about all.

Q. What, if anything, else have you done?

A. I don't recall anything else.

Q. Do you want it to be understood that your sole means of livelihood during the last year has been from the sale of newspapers?

A. That is right.

Q. Now, with reference to these Green Sheets, one of which is Board's Exhibit 20, did those sheets help to sell the Los Angeles Examiner? [1646]

A. Well, I think that they probably did in some ways, to the horse players.

(Testimony of Ernie James Latham.)

Q. You never objected to selling them, did you?

A. Certainly not. I was making money out of them. Why should I?

Q. What do you mean by the expression "take a powder"?

A. It's a fellow that runs off with—after you have got a man on the corner he sells the papers and runs off with all the money and don't come and pay you for them.

Q. And when this off-spot man was put on your corner you told Mr. Jackson—Or, Mr. Jackson told you, did he, that if the off-spot man took a powder you would have to stand the loss?

A. He did. For me to watch him.

Q. Did you handle any other newspapers besides the Examiner at Florence and Figueroa Streets? A. No.

Q. During the years 1938 and 1939, down to July, 1939, did you sell any other newspapers besides the Los Angeles Examiner? A. No.

Q. As a matter of fact, at the time the Green Sheet—which is Board's Exhibit 20—was being sold by you there was a [1647] column in the Los Angeles Examiner itself containing selections of Mr. Moore, was there not?

A. Yes, but you had to have the Green Sheet to tell which horse—

Q. That is what I was coming to. The purchaser that purchased the Los Angeles Examiner could not read or determine what selections Mr. Moore was

(Testimony of Ernie James Latham.)

recommending unless such purchaser of the newspaper also purchased the Green Sheet; isn't that right?

A. Yes, that is what they tell me.

Q. Well, you saw that column in the Examiner at the time you were selling it, didn't you?

A. I did.

Q. And you weren't able to read that column without reference to the Green Sheet, were you?

A. Well, I never read the column.

Q. Did you say that the Green Sheet was given to you first at the time that there were horse races over at Santa Anita?

A. I said I wasn't for sure, but I think it was Santa Anita.

Q. You think it was Santa Anita?

A. Yes, Santa Anita or Hollywood, either one.

Q. Either Santa Anita or Hollywood?

A. That is right.

Q. Could it have been any other tracks? [1648]

A. No.

Mr. Hall: That is all.

Mr. Cosgrove: Will it be stipulated, Mr. Mouritsen, that the testimony of the witness Latham has no relation to the Los Angeles Times case?

Mr. Mouritsen: That may be so stipulated.

Mr. Compton: And may the same stipulation

be made on [1649] behalf of the Evening Herald and Express?

Mr. Mouritsen: Yes; that may be so stipulated.

Mr. L. B. Binford: And the same stipulation with relation to the Stockholders Publishing Company?

Mr. Mouritsen: So stipulated.

Nos. 10112, 10114, 10115, 10123

United States
Circuit Court of Appeals
For the Ninth Circuit.

No. 10112.
HEARST PUBLICATIONS, INCORPORATED,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10114.
STOCKHOLDERS PUBLISHING COMPANY, INC.,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10115.
HEARST PUBLICATIONS, INCORPORATED,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

No. 10123.
THE TIMES-MIRROR COMPANY, a corporation,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

Transcript of Record
In Four Volumes
VOLUME IV
Pages 1477 to 1842

Upon Petitions for Review and Enforcement of Orders of the National Labor Relations Board

ROTARY COLORPRINT, 590 FOLSOM ST., SAN FRANCISCO

CELESTINO SANCHEZ

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Sanchez, where do you live? A. At 627 Crocker Street.

Q. (By Mr. Mouritsen) In the city of Los Angeles? A. That is right.

Q. And have you handled the Los Angeles Examiner? A. I have.

Q. Have you ever handled the Los Angeles Examiner at Fifth and Main Street?

A. I did. [1650]

Q. And when did you start to handle the Examiner at that place? A. May 14th.

Q. What year? A. 1939.

Q. And prior to that time did you have a conversation with any Examiner district man regarding your operation on that spot? A. I did.

Q. With whom? A. Abie Pierce.

Q. Where did that conversation take place?

A. That conversation occurred at the S. P. Depot.

Q. And was anyone else present other than you and Mr. Pierce? A. Not that I can recall of.

Q. Will you state what Mr. Pierce said to you and what you said to Mr. Pierce?

A. Mr. Pierce said, "Well, now that the station is going to close, I have a spot for you, that

(Testimony of Celestino Sanchez.)

is at 5th and Main, if you want it, and if not you can take your choice or either go to the new station."

That is where my other spot was supposed to have been, at the new station, but he mentioned the fact in case I didn't get that spot I was to receive 5th and Main. [1651]

Q. Was that about all the conversation you had with him at that time?

A. That was all the conversation at that time, yes.

Q. Did you have a further conversation with him regarding your operation at 5th and Main?

A. I did.

Q. And when did that occur?

A. That occurred about two days after I had been on the spot. That was about the 16th of May of 1939. He mentioned the fact that I had to distribute the papers out to my off-spots.

Q. Where did you have this conversation with him?

A. That conversation, I had it at Fifth and Main.

Q. And who else was present, if anyone?

A. Oh, there was hustlers but they didn't pay any attention to any of that, because it was directly towards me.

Q. This conversation was with Mr. Pierce; is that correct? A. That is correct.

Q. Will you state what Mr. Pierce said to you at that time and what you said to him?

(Testimony of Celestino Sanchez.)

A. Mr. Pierce says to me, he says, "These papers are supposed to be distributed to your off-spots and also to First, Second, Third, and Fourth and Main," the other spots besides my off-spots, and I said, "Well, all right."

Q. Do you recall anything further that he said at that time?

A. No, not anything else at that time.

Q. And you had some off-spots on that corner at Fifth and Main? A. I did. [1652]

Q. How many? A. I had four off-spots.

Q. And after that time did you distribute papers to those off-spots? A. I did.

Q. And to these other places he enumerated?

A. That is right.

Q. Did you receive any money for doing that, from Mr. Pierce? A. I did not.

Q. Did you receive anything else of value?

A. Not that I can recall of.

Q. When you first took over the corner at Fifth and Main, at what hour did you receive the first edition of the paper, as a general rule?

A. As a general rule we got the papers—one time the papers come out about 5:45 to the corner there. Then there was a change and they didn't get there until 6:00 o'clock.

Q. Now, did you ever have a conversation with Mr. Pierce regarding the time when you were to start selling? A. No, I didn't.

Q. After you had been on the spot for some

(Testimony of Celestino Sanchez.)

time, was there any change in the hour when the papers started to appear? A. Yes, there was.

Q. And what was the change? [1653]

A. The papers started coming out later.

Q. Approximately how much later?

A. About 15 minutes.

Q. So that they started coming out at approximately what time of the evening?

A. About 6:00 o'clock.

Q. Do you recall about when that change occurred?

A. That change occurred, oh, about a month after I had been on the spot.

Q. That would be approximately around the middle of June, 1939? A. That is right, yes.

Q. Prior to that time did you have any conversation with Mr. Pierce regarding that change in hours?

A. Yes. He did mention the fact that—

Q. Where did he mention that fact to you?

A. At the Belmont Cafe.

Q. Where is the Belmont Cafe?

A. Fifth and Main Street.

Q. Was anyone else present?

A. Oh, there was several newsboys there.

Q. What did he say to you at that time?

A. He said, "Well, the papers are coming out later now."

Q. Is that all of the conversation that you recall?

A. That is all I recall at that time, yes. [1654]

(Testimony of Celestino Sanchez.)

Q. Well, after that time, did you have a conversation with him respecting the sale of papers before 6:00 o'clock?

A. I did at the S. P. depot.

Q. Can you fix the time of that conversation?

A. Will you repeat that question?

(The question referred to was read by the reporter, as set forth above.)

A. Well, I would say about—some time in March—about the 10th of March.

Q. Of what year? A. 1939.

Q. Did you handle the Examiners at the S. P. depot? A. I did.

Q. Was anyone else present at that conversation?

A. There was some young kids there, that was all.

Q. Will you state what Mr. Pierce said to you and what you said to Mr. Pierce?

A. Well, he—he said, "There has been a change. You are not supposed to sell any papers until 6:00 o'clock. Hold them until 6:00 o'clock, he said.

Q. And did you hold the papers after that time until 6:00 o'clock.

A. I had to hold them; yes, I did.

Q. Do you recall when the American Legion Convention was held in Los Angeles? [1655]

A. September, 1938.

Mr. Mouritsen: I think we have a stipulation on that, Mr. Hall, but I do not recall the exact date. Is that—

(Testimony of Celestino Sanchez.)

Mr. Hall: I think the young gentleman coincides with my view in the matter, counsel.

Q. (By Mr. Mouritsen) During the period while the American Legion was in town did you receive any inserts for the paper other than the regular edition?

A. I did. I got what they call—It was an American Legion supplement. It is the official organ of the American Legion, but I don't quite remember just what the wording was on it, but it was a supplement of the Examiner—they furnished the supplement.

Q. Did Mr. Pierce bring that supplement around with the regular paper? A. He did.

Q. Was the supplement inside the paper?

A. No.

Q. Did he say anything to you regarding the supplement? A. Yes, he did.

Q. What did he say?

A. He says, "Be sure that each one of these Examiners is stuffed with one of these supplements."

Q. Did you stuff the insert in the regular paper? A. I did. [1656]

Q. During that period did Mr. Pierce ever say anything to you regarding distribution of certain papers?

A. Not during that period, no.

Q. Or shortly before that period, did he?

A. No.

(Testimony of Celestino Sanchez.)

Q. Did he ever have a conversation with you regarding the distribution of Examiners to a trainload of people?

A. I did. During the American Legion Convention.

Q. About where did the conversation take place?

A. This conversation took place at the Examiner alley.

Q. And was anyone else present?

A. There was several fellows there. There is one fellow right here in the hall that was there.

Q. Who is that?

A. Oh, he was just here just now. He is a crippled fellow, kind of shaky-like. Well, he's left now. He was here just a minute ago.

Q. You don't recall his name?

A. I don't recall his name, no.

Q. What did Mr. Pierce say to you and what did you say to Mr. Pierce at that time?

A. He says, after we got the car loaded with the papers and the insert, he says, "Be sure that these papers are all inserted and supply every one of the delegation of the—" I don't remember whether it was the Phoebe Hearst Post there—when the American [1657] Legion Post came, to supply them with the paper free of charge.

Q. Did you follow those instructions?

A. I did.

Q. Did that take a certain amount of your time from your selling operations?

(Testimony of Celestino Sanchez.)

A. It did. It took about an hour.

Q. Did you receive any pay for doing that work?

A. I did not.

Q. Did you receive anything else of value from Mr. Pierce? A. No.

Q. After commencing your operations on Fifth and Main, did you ever have a conversation with Pierce about your being off the corner?

A. I did, on one occasion.

Q. About when was that?

A. That was about—about three—about three weeks after I had been on the corner.

Q. It would be about the first week in June, 1939? A. Yes, that's it. Yes.

Q. Where did the conversation take place?

A. The conversation took place right on the corner of Fifth and Main.

Q. Was anyone else there?

A. There was a fellow in the car with him, but I don't [1658] remember his name.

Q. Will you state what Mr. Pierce said to you and what you said to Mr. Pierce.

A. He said to me, he says, "Jesus Christ, Sellie, you shouldn't get off the spot." He says, "Don't you know that we have got checkers around and if they catch you off the spot that will mean my job and I'll have to let you go?"

Q. Was that about all the conversation that you recall?

A. I said to him, "Well, Abe, there is no sale

CELESTINO SANCHEZ

(Testimony of Celestino Sanchez.)

here from 3:00 o'clock on until 6:00 o'clock. You are lucky if you sell four papers. It's a different thing; if it was of any value, all right, I'd stick around."

He said, "I don't care about that." He said, "The spot has got to be covered, irregardless of whether there is one paper sold here."

Q. Was anything further said?

A. That was all.

Q. During the period while you were on the corner of Fifth and Main did Mr. Pierce ever give you more copies of the paper than you wanted?

A. He did on the midnight edition.

Q. Did that happen on more than one occasion?

A. That did, on many occasions.

Q. And on the occasions when he gave you the extra copies of the midnight did you have to pay for them at that time? A. I did, yes. [1659]

Q. Then were you permitted to return them later? A. Yes, the following day.

Q. When you operated on the corner of Fifth and Main, did you receive any advertising placards?

A. I did. Those—those war maps.

Q. About when did you receive those?

A. About the outbreak of the war, or perhaps maybe before that. They had them running currently.

Q. Well, can you fix the approximate date when that was? A. No, I can't.

Q. When did you cease operating on the corner?

(Testimony of Celestino Sanchez.)

A. About the 22nd of October, 1939.

Q. How long prior to the time when you ceased operating on that corner was it that you received these maps?

A. Oh, at Fifth and Main, we got the maps right after the outbreak of the war. That was in September.

Q. And at that time did you have any conversation with Pierce regarding those maps?

A. Yes. He—he mentioned the fact that everyone of these—

Q. Wait a minute. Where did the conversation take place?

A. This conversation took place—well, he was on the truck, at Fifth and Main.

Q. Was anyone else present?

A. Yes. My off-spot hustlers.

Q. What did Mr. Pierce say to you and what did you say to [1660] Mr. Pierce?

A. Well, Mr. Pierce said to me, he said, "Be sure that these placards are on display and that—and these maps have to be returned at the end of the night."

And I said, "Yes, all right."

Q. Did you display the maps on the corner?

A. I did.

Q. Did you do anything else with them other than display them? A. No.

Q. Did you return them at the end of the night?

A. That is right.

(Testimony of Celestino Sanchez.)

Q. Where did you check in during the period while you were operating on Fifth and Main?

A. The Belmont Cafe at Fifth and Main.

Q. And to whom did you check in?

A. Abe Pierce.

Q. As a general rule, during what hour of the day or night did you do that? A. About 1:30.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Hall) When you displayed those maps, what did you do with them?

A. Put them right on the fire plugs, on any place where I [1661] could hang them on.

Q. Just set them up so the public could look at them; is that correct?

A. That was the general idea.

Q. And is the same thing true about the placards?

A. The placards and these maps, as I understand, they are all one. Of course, from time to time they appeared in the Examiner; that is, our Examiner district man brought us around a small—those signboards—

Q. When you were talking about maps and placards then, you were talking about the same thing?

A. The same one, yes.

Q. I understood you to say that you handled the Los Angeles Examiner down at the old Southern Pacific depot? A. That is correct.

Q. And that was the place where you were sel-

(Testimony of Celestino Sanchez.)

ling Examiners at the time of the Legion Convention, wasn't it?

A. That is right, yes.

Q. You had some boys working for you there, didn't you? A. I did, yes.

Q. You took care of their compensation yourself, didn't you? A. Yes.

Q. I mean they were selling Examiners for you?

A. That is right. [1662]

Q. You had quite a little business down there, didn't you?

A. Well, I was making a living, if that is what you want to know.

Q. Well, did you have a bootblack stand?

A. Well, that doesn't concern you a bit.

Q. I see.

Well, you might let me know one way or the other.

A. Well, the idea is that I am supposed to answer your questions, not you answer them. Well, never mind. Let's forget it.

Q. Well, let me put you another question.

A. All right.

Q. At the time you were selling Examiners at the Southern Pacific depot, were you or were you not operating a bootblack stand?

A. I don't have to answer that question.

Q. You can answer either yes or no.

A. Well, I will make it simple for you: Yes.

Q. Now, these boys that were working for you,

(Testimony of Celestino Sanchez.)

they were selling the Los Angeles Examiner, weren't they? A. That is correct.

Q. Are you still selling the Los Angeles Examiner? A. I am not.

Q. That is right. I think you said you stopped sales of [1663] the Los Angeles Examiner on October 22, 1939. A. That is right, yes.

Q. Is that right?

A. That is right, yes, sir.

Q. How do you fix the date October 22nd?

A. Merely by the fact that I was checking over the other day, over at work, where I work, and they have an account at the time that you went to work there, and I just happened to glance at the date and I knew that was the date because I was checking my Social Security.

Q. You are working now at the same place you started to work when you stopped selling the Los Angeles Examiner; is that correct?

A. That is right, yes.

Q. Would you mind telling us what that employment is? A. Furniture finisher.

Q. And you have had full time work as a furniture finisher since you stopped selling the Examiners; is that correct?

A. I have been a full time worker, yes.

Q. So that since October 22, 1939, you haven't been a newsboy?

A. That is right, since the 22nd of October, 1939.

(Testimony of Celestino Sanchez.)

Q. Did you have this job with the furniture finisher establishment before you stopped selling the Los Angeles [1664] Examiner?

A. I got that job on a Thursday and I went to work on a Saturday, but after work I come back and finished my night on the papers and that Saturday was my last night.

Q. So you really quit selling papers to take that furniture finisher's job, didn't you?

A. That is right, yes.

Q. Had you worked at the furniture finisher's place of business at all before that?

A. I worked in another place for a period of about six months.

Q. What six months period was that?

A. Oh, let me see; that was in 1935. [1665]

Q. (By Mr. Hall): Had you worked at furniture finishing between 1935 and October of 1939?

A. Yes, I worked, for six months, that was all, in 1935 up to about—let's see; I started working there in about September of 1935, until about—let me see. That was about in February of 1936. That was the last time.

Q. And between February, 1936 down to October of 1939, you hadn't done any work in any furniture finishing establishment? A. No.

Q. You hadn't had anything to do with that business? A. No, sir.

Q. These Los Angeles Examiner newspapers that you sold were either the Peach or the CC or the CCC editions, weren't they?

(Testimony of Celestino Sanchez.)

A. That is right, yes. Of course, on Saturdays they had different markings on them.

Q. Did you sell the Sunday Examiner?

A. I did.

Q. Now, you testified that there were occasions when Mr. Pierce gave you more copies of the Los Angeles Examiner than you wanted.

A. That is right, on the Midnight.

Q. But your unsold copies of the Examiner you always got credit for, didn't you? [1666]

A. I got returns, if that is what you mean.

Q. Well, you got full returns?

A. Yes, I did.

Q. That insert that was put in the newspapers at the time of the Legion Convention helped you to sell the Los Angeles Examiner, didn't it?

A. That wasn't put by the Examiner. The newsboys stuffed them.

Q. But after the paper was stuffed with that insert or supplement, it was easier for you to sell the paper to Legionnaires, wasn't it?

A. Yes, it was.

Q. As a matter of fact, you wouldn't have been able to sell very many papers to Legionnaires that hadn't been stuffed with that supplement in competition with other newsboys who were selling newspapers that had been stuffed with that supplement, would you? [1667]

Redirect Examination

Q. (By Mr. Mouritsen): As a matter of fact, Mr. Sanchez, after you stuffed the insert inside of

(Testimony of Celestino Sanchez.)

the papers, you couldn't see the insert, could you, inside of the paper? A. No.

Mr. Mouritsen: That is all.

Mr. Hall: You said that there were other boys down there at the old Southern Pacific station that were selling Los Angeles Examiners for you?

The Witness: That is right.

Mr. Hall: Working for you?

The Witness: That is right.

Mr. Hall: Did you make a profit on the papers that they sold?

The Witness: I did.

Mr. Hall: That is all.

Mr. Cosgrove: Before adjournment, if the Examiner please, may we have a stipulation, Mr. Mouritsen, that the testimony given this afternoon by the witness Celestino Sanchez, has no application to the Los Angeles Times case?

Mr. Mouritsen: That may be so stipulated.

Mr. Compton: May we have the same stipulation on behalf of the Los Angeles Evening Herald and Express?

Mr. Mouritsen: So stipulated.

Trial Examiner Kennedy: So stipulated. [1668]

Mr. L. B. Binford: And the Stockholders Publishing Company, Mr. Mouritsen?

Mr. Mouritsen: So stipulated. [1669]

(Testimony of Celestino Sanchez.)

Tuesday, June 25, 1940.

Met, pursuant to adjournment, at 9:30 o'clock A. M [1671]

Trial Examiner Kennedy: The hearing will be in session.

Yesterday during a recess in the morning, I sent the following telegram to my chief, "George A. Pratt, Chief Trial Examiner, National Labor Relations Board, Washington, D. C. Re XXI-R-1084.

"Approximately 200 cards apparently designating petitioner presented for my inspection. Los Angeles Examiner has no payroll nor list of newsboys with which to compare these cards. Please wire whether Board or Petitioner should be directed to prepare this list. Such preparation would probably require many days and considerable expense. Answer. Los Angeles Labor Board. (Signed) Thomas H. Kennedy."

This morning I received the following reply directed to me by telegram, that reads as follows:

"Evidence should be introduced to show that persons signing cards are employees. Burden is on Petitioner to show this fact. I assume Respondent denies card signers occupy position of employees. If so, evidence should be introduced to show what each individual does. (Signed) George A. Pratt, Chief Trial Examiner."

That is all I know about it. [1673]

JOHN DEERING

called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Mr. Deering, did you ever handle the Los Angeles Examiner?

A. I did.

Q. Did you ever handle it at Sixth and Main?

A. Yes, sir.

Q. From whom did you obtain that spot?

A. The District Manager, A. Pierce.

Q. And about when did you obtain that spot from him?

A. I would say approximately the second or third week in [1674] August of 1938.

Q. Did you have a conversation with him prior to that time when you obtained it?

A. I did.

Q. Where did you have the conversation?

A. At the Examiner alley.

Q. Was anyone else present?

A. I don't recall anyone else listening in, if that is what you mean.

Q. Well, there was a number of other newsboys and district men in the alley?

A. Well, they were all down there, yes sir.

Q. They did not take part in the conversation; is that correct? A. No.

Q. And was this just prior to the time when you started to sell at Sixth and Main?

(Testimony of John Deering.)

A. That is right.

Q. Will you tell what you said to Mr. Pierce and what he said to you?

A. Well, after ascertaining that he was the—one of the downtown district men, I asked him if he had a spot open, and he asked me for whom I had worked before, and I mentioned one other district man with whom I had worked, and so he said, "Well, I think I can find a spot for you. Come down to Sixth [1675] and Main and wait for me down there."

Q. And did you do that? A. I did.

Q. Did you have a conversation with Mr. Pierce at Sixth and Main?

A. He told me to go where the main spot man said——

Q. The answer is yes or no. A. Yes.

Q. Was anyone else present at that conversation?

A. The main spot man was present besides myself.

Q. Do you recall his name?

A. I don't recall his last name. He was a one-legged man. His first name was Larry.

Q. And approximately how long after your first conversation did it take place?

A. The same evening.

Q. The same evening about——

A. Perhaps an hour later.

Q. Will you state what Mr. Pierce said to you and what you said to Mr. Pierce?

(Testimony of John Deering.)

A. Well, he told me to go where the main spot man sent me, and at the same time right immediately following that he told the main spot man to put me at the station entrance.

Q. What station?

A. Pacific Electric Station. [1676]

Q. Was that near Sixth and Main?

A. Yes, sir.

Q. Do you recall anything else that was said at that time?

A. Nothing by Mr. Pierce. [1677]

Q. And did you take the papers and start selling them in front of the P. E. Station?

A. I did.

Q. About how long did you continue to operate at or in front of the P. E. Station?

A. Well, as near as I can recollect, I sold there until perhaps about the 1st of February of 1939.

Q. Now, during the period while you were operating at that spot, did you ever have any conversation with Mr. Pierce regarding the place where you were to sell? A. Yes, I did.

Q. And did you have more than one such conversation? A. Yes, sir.

Q. Can you fix the approximate time when you had the first [1678] conversation regarding the place where you were to sell?

A. I can fix it approximately, but not exactly.

Q. Well, will you give us the approximate date when it happened?

(Testimony of John Deering.)

A. I would say about the 1st of—the 1st of January.

Q. Of what year? A. 1939.

Q. And where did the conversation take place?

A. It took place at the corner of Sixth and Main.

Q. Was anyone else present?

A. The main spot man was present.

Q. Was that this same Larry? A. Yes, sir.

Q. Now, what did Mr. Pierce say to you at that time and what did you say to Mr. Pierce regarding the place where you were to operate?

A. He told me that I should stand away from the building and out on the sidewalk, and I told him that I could sell more papers and catch more people by standing right directly against the Pacific Electric Building so as to catch the people coming out of the building and the people walking both directions on the sidewalk. And he told me that I was wrong, and that I could sell more papers standing out on the sidewalk and that I should stand out there.

Q. Was that all of the conversation? [1679]

A. At that time, yes, sir.

Q. And did you stand out away from the building at that time as he had instructed you?

A. I did.

Q. After that time, did you have a further conversation with him regarding the place where you would operate? A. Yes, sir.

I asked him if it was not possible to obtain a better spot; that I could not make very much

(Testimony of John Deering.)

money where I was and I would like to have a better spot if it was possible.

Q. About when did this conversation occur?

A. Well, it occurred quite a number of times; but about the first time, I would say, was within a week after the last mentioned conversation.

Q. And where did it take place?

A. In the Belmont lunch room at Fifth and Main.

Q. Where did you check in?

A. I check in to the main spot man at Sixth and Main.

Q. And who were present at this time—at the time of this second conversation?

A. There were several news vendors present. I believe among those present—pardon me; I will correct that.

Among those present was one elderly man who sells papers. His name was Marco.

Q. I see. [1680]

And was anyone else other than Marco present?

A. There were several others present, but I don't recall who they were, or their names.

Q. You and Mr. Pierce were there; is that correct? A. Yes, sir.

Q. Will you tell us what Mr. Pierce said to you and what you said to Mr. Pierce?

A. I asked him if it was not possible to obtain a better spot; that, because of the fact I was married, I couldn't make enough money to subsist where

(Testimony of John Deering.)

I was; I was running in the hole financially and I understood that from time to time he had much better spots than that open, and I would like to fall into them, at least for seniority if for no other reason.

Q. And what did he say, if anything?

A. He said, "Well, you should come up to see me more often so that I keep you in mind, and as soon as I have a better spot open I will let you know."

Q. Was that about all the conversation?

A. Well, he asked various of those newsboys who sold for them that were gathered around the table there at that time if they hadn't made money working for him.

Mr. Hall: Is this part of the conversation?

The Witness: Yes, sir. And of course these men replied that they were making money working for him.

Q. (By Mr. Mouritsen): Mr. Deering, did you ever have a con- [1681] versation with him, with Pierce, regarding your working in front of the drug store near Sixth and Main? A. I did.

Q. When did that conversation occur?

A. That took place sometime in January of 1939. I don't remember the date.

Q. And where did that conversation take place?

A. At Sixth and Main.

Q. Who were present?

A. The main spot man and myself.

(Testimony of John Deering.)

Q. Was anyone else present?

A. Not that I recall.

Q. Was this Larry the main spot fellow?

A. Yes, sir.

Q. What did he say to you at that time and what did you say to him? [1682]

The Witness: The main spot man told me that I should not sell in front of the entrance to the drug store; that I should sell in front of the entrance to the station itself.

Q. During the period while you were on that spot, Mr. Deering, did Mr. Pierce furnish you with a change apron? A. He did.

Q. Did he furnish you anything else?

A. He furnished me from time—or excuse me. I will withdraw that.

Any other supplies that I was furnished were furnished by Mr. Pierce through the main spot man.

Q. What other supplies were furnished through the main spot man?

A. I was furnished placards and other advertising matter, advertising features in the Examiner, from time to time; and at the time the American Legion held their convention in Los Angeles, I was furnished a cap patterned after the American Legion cap, colored blue and yellow, and on the cap it read "Welcome, Legionnaires," and "San Francisco Examiner"—pardon me, really, "Examiner."

Q. Did the main spot boy say anything to you regarding the use of that hat? [1683]

(Testimony of John Deering.)

A. He said "The boss says you are to wear this." [1684]

Q. (By Mr. Mouritsen): About when did this conversation take place?

A. Pardon me? I did not quite get whose conversation it was.

Q. Well, that was with reference to the Legion cap.

A. Well, I would say approximately two or three days before the American Legion convention officially opened.

Q. And that date has been fixed as sometime in September, 1938.

Where did the conversation take place?

A. At the corner of Sixth and Main.

Q. And who were present?

A. Present at the time was the main spot man and myself.

Q. Will you state what he said to you, and what you said to him?

A. Well, he said "Here's this cap. The boss says to put it on."

Q. Was anything further said?

A. I believe I made some remark about the cap. I—— [1685]

The Witness: I made some slight objection to wearing it, but I wore it.

Q. (By Mr. Mouritsen): Who did you understand by his reference to "the boss"?

The Witness: Abe Pierce.

(Testimony of John Deering.)

Q. (By Mr. Mouritsen): While you were on this spot—that is, in front of the P. E. Depot—during what hours did you operate?

A. I started to work at approximately 6:00 o'clock; worked until 12:30 week days and with the Sunday papers we started approximately 2:30 Saturday afternoon and finished 1:00 o'clock Sunday morning. Of course, on holidays the paper usually [1686] came out an hour or two earlier.

Q. Did anyone ever say anything to you about the time that you were to cease operating, the hour at which you were to cease operating?

A. They did. [1687]

Q. Who was that?

A. The main spot man.

Q. And about when did he first say anything to you regarding that?

A. The first night that I sold papers at that place.

Q. And who were present when he said anything to you regarding that?

A. Well, there was a Times newsboy on that same corner with the main spot man, but I don't know whether or not he listened in to the conversation.

Q. What did he say to you at that time, and what did you say to him?

The Witness: I asked the main spot man how long I was supposed to work on that corner, and he said to quit at 12:30 when the station closes up.

(Testimony of John Deering.)

Q. (By Mr. Mouritsen): And after that time, did you check in at approximately that time?

A. Yes, sir.

Mr. Hall: If the Examiner pleases, I move to strike now those portions of the testimony of John Deering in which he [1688] has testified to conversations with the main spot man, a man that he testifies was located at Sixth and Main Streets, those conversations having to do specifically with the point on the sidewalk where Mr. Deering was to stand; the conversation in which Mr. Deering was told not to sell newspapers in front of the drug store; the conversation in which Mr. Deering was told by the main spot man to wear a cap resembling a Legion cap and the conversation in which Mr. Deering was told by the main spot man that he must remain in front of the depot during a certain period; my motion being based upon the ground that no proper foundation has been laid for any of those conversations, that they are hearsay, that there is nothing in the record that shows that those conversations or any of them are binding upon the Los Angeles Examiner, and upon the ground that they are irrelevant and immaterial.

In connection with my objection I call attention to the fact that this main spot man has not been identified by name; that if we were desirous of producing that main spot man there is no data in the record upon which we could base an application for a subpoena duces tecum. I call attention in connec-

(Testimony of John Deering.)

tion with this objection to the further fact that there is no testimony in the record showing that the main spot man was authorized to give any instructions or directions on behalf of the Los Angeles Examiner, or that the main spot man [1689] was not himself, as is the contention of the Los Angeles Examiner, an independent contractor. [1690]

Trial Examiner Kennedy: I am sure that it is impossible to attest this testimony unless we take a deposition of John Doe in Minneapolis, and I do not think we are going to do that, so I will grant the motion to strike.

Mr. Mouritsen: Including that portion of it, Mr. Examiner, wherein this witness—of the first conversation where this witness, Pierce and the main spot boy were present?

Trial Examiner Kennedy: No, I do not think the motion went to that. If it did, I did not so understand it. [1691]

Mr. Mouritsen: And of course the motion is not granted as to any conversations that the witness had directly with Pierce?

Trial Examiner Kennedy: No.

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony given by the witness John Deering is not appli- [1692] cable to the Los Angeles Times?

Mr. Mouritsen: Yes. John Deering, did you say?

(Testimony of John Deering.)

Mr. Cosgrove: I thought it was Beering.

Mr. Mouritsen: Deering.

Mr. Compton: May the same stipulation be made on behalf of the Los Angeles Evening Herald and Express?

Mr. Mouritsen: It may be so stipulated.

Mr. L. B. Binford: May the same stipulation be made on behalf of the Stockholders Publishing Company?

Mr. Mouritsen: It may be so stipulated. [1693]

ROY ELEY

recalled to the stand by and on behalf of the National Labor Relations Board, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

Trial Examiner Kennedy: You have already been sworn.

Q. (By Mr. Mouritsen): Mr. Eley, I believe you testified earlier that at one time you held the position of Chairman of the Organizing Committee of the Union, is that correct?

A. That is correct.

Q. And during what period was that?

A. From the first Sunday in August until, I believe, the first Sunday in January; the first Sunday in August of 1939 until the first Sunday in January of 1940.

(Testimony of Roy Eley.)

Q. During that period, did you make any efforts to organize newsboys selling Los Angeles Examiner other than in the City of Los Angeles? [1694]

A. Nothing, only within Glendale.

Q. This is with reference to the Los Angeles Examiner.

A. Oh, to the Examiner. No.

Q. And to your knowledge, were any efforts made by any other officer of the Union with reference to the organization of the Los Angeles Examiner newsboys other than in the City of Los Angeles?

A. Not that I know of.

Q. Did you attend the meetings, the general membership meetings, of the Union during that period? A. I did.

PATRICK COMORRE

recalled to the stand by and on behalf of the National Labor Relations Board, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Mr. Comorre, I believe you testified earlier when you were on the stand that you were the organizer for the Newsboys Union? A. That is right.

Q. And during what period were you organizer? [1695]

(Testimony of Patrick Comorre.)

A. About July, '38 to July, '39.

Q. During that period, did you make any efforts to organize newsboys for the Los Angeles Examiner other than those within the city limits of Los Angeles?

A. I didn't make any efforts, no.

Q. Do you know of any efforts to organize Los Angeles Examiner newsboys by any other officials of the Union except within the city limits of Los Angeles?

A. No. I don't think there was any attempt ever made?

Mr. Mouritsen: There was one additional matter, Mr. Hall, with reference to an answer, I believe, to Board's 20, I believe it was—Board's 19.

Mr. Hall: Board's 19, yes, Mr. Mouritsen.

I will stipulate this, if you desire it: That A. F. Logan, to whom this letter, Board's Exhibit 19 was addressed, would if he were called as a witness testify that he did not reply to this letter either verbally or in writing. [1696]

ROY ELEY

recalled to the stand by and on behalf of the National Labor Relations Board, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen): Mr. Eley, I show you Board's Exhibit 19, and I will ask you if after you sent that letter you ever received a letter or a verbal reply to Board's Exhibit 19 after that time? [1697]

The Witness: The only reply that was ever received to that letter was several telephone communications that I had with the switchboard operator, and I was advised that there was no way that I could possibly contact Mr. Logan or anybody to represent him.

Q. (By Mr. Mouritsen): I believe you have already stated that you have held the position of acting secretary? A. Yes.

Q. Up until what time?

A. Up until the first Sunday of January, 1940.

Q. To your knowledge, has any reply been received by the Union since January 1st, 1940?

A. None whatever, to my knowledge. [1698]

Trial Examiner Kennedy: What about this matter referred [1700] to in the telegram I read this morning?

Mr. Mouritsen: Well, I think, Mr. Examiner,

after considering the telegram, I think we have been doing just what the Chief Trial Examiner has indicated in his telegram, taking evidence to show that these persons who the Union claims signed the cards are employees, and the evidence that has been taken has been taken to indicate what the newsboys as a class do.

Trial Examiner Kennedy: That is not what he says in the telegram. He says that evidence should be introduced to show what each individual does.

Mr. Mouritsen: Well, I think we have, Mr. Examiner.

Trial Examiner Kennedy: Well, I don't think so.

Mr. Mouritsen: Well, now——

Trial Examiner Kennedy (Interrupting): We have certainly heard about situations of maybe a dozen, but not 220.

Mr. Mouritsen: Well, here is the situation, Mr. Examiner, and the way that I understand the telegram—I would be happy if the Examiner would indicate to me wherein my understanding might be incorrect—as I understand the purpose of presenting the cards is to indicate that a question concerning representation has arisen; in other words, that a sufficient number of people have indicated or have designated the Union as their bargaining agent; and that in order to save time and to obviate holding an election at the hearing, [1701] that that procedure has been adopted. But the purpose is to show that a question has arisen concerning representation. So that if, for instance, a Union should

come in and claim only that, say, 10 people out of a claimed 250 had designated it, that that would not be a sufficient showing that a question had arisen; that cards are presented to show some basis for their claim that a question concerning representation has arisen.

Now, in the petition, I think the number of people within the claimed unit as set out is some 300 men. The Union claims that approximately 221 have designated the Union as bargaining agent.

Trial Examiner Kennedy: It seems to me that there is a gap here in the record; that is, we have testimony on a certain number of newsboys as to what they do, and I don't [1702] know how many have testified in the Los Angeles Examiner case, but I do not think it is more than a dozen; and we have 221 cards that I have examined. There is nothing to show that any one of that possibly dozen of names appears on any one of the 221 cards; and there is nothing to show just how many persons are in this definition of "unit"; and there is nothing to show how many of the 221 signatories are in that unit.

That objection and that observation might also apply to the Los Angeles Times case, because, although we have a list there, we have no designation of exactly how many persons on that list are in the claimed unit.

As to the News and the Herald cases, I believe that there was an indication from the list how many were in the claimed unit. I do not see anything wrong about that.

So we do not have the same kind of a record in the Los Angeles Examiner case as we did in the other three cases; and, as I read the telegram from the Chief Trial Examiner, he wants to know, or he says the record should show what each individual does. And I do not believe that by showing what 12 individuals do would show what the 221 individuals do, or 350 or 310. I believe that it would be a rather violent inference to jump from 12 or 15, or whatever it is, to 221.

That is my observation on the matter. I suppose that one way it could be handled, we could have some one testify [1703] as to the names on each one of these 221 cards and as to what they do, if they know.

You see, another thing in checking these cards before, we found a great many signatories who were not in the claimed unit, that is, by comparing the cards with the lists. For example, in the L. A. Times case, almost half the signatories were not on the list at all.

Mr. Mouritsen: Well, that, of course, could be explained by a number of factors, including the dates, for example, when the petition—not the petition, but the list, was prepared, and the times when the cards were signed. But I——

Trial Examiner Kennedy (Interrupting): You appreciate, of course, that in the ordinary representation case where there isn't any denial of the employer-employee relation, generally the payroll is forthcoming without any question and it is a very

simple matter to establish by inspection that the names of the persons on the cards are the same as the names of the persons on the payroll. Well, we haven't that, or such a parallel matter here. That is the point.

Mr. Mouritsen: Well, I think——

Trial Examiner Kennedy (Interrupting): And apparently I would say that at least the Chief Trial Examiner thinks it important.

Mr. Mouritsen: I suggest that we perhaps proceed with the record as it now is, and if the question is not covered, [1704] if it has not been sufficiently indicated that the question concerning representation has arisen, which I anticipate has been demonstrated by a number of other factors as well as these cards, then I think the Board could have the case reopened and designate, indicate for what purpose and along what lines they desire further information.

Trial Examiner Kennedy: Of course, the alternative is that the Board will dismiss the petition. I hope the Petitioner understands that, too.

I think under the circumstances, Mr. Mouritsen, that you had better communicate with your superiors in Washington and get their advice on the subject, because it is certainly not the policy of the Board to have a series of hearings.

Mr. Mouritsen: Well, I appreciate that, Mr. Examiner.

Trial Examiner Kennedy: And it is also not the policy to get a record up in such shape that be-

cause something is not done at a hearing that could have been done, the petition is dismissed. I am sure the Petitioner would not want that done and I do not believe that the companies would like to come back in here for the further hearing at some other time.

Mr. Mouritsen: Let me then understand what the Trial Examiner's idea is on what further evidence should be put in, or the type of evidence.

Trial Examiner Kennedy: Evidence should be introduced to show what each individual does. Now, I do not think that [1705] has been done.

Mr. Mouritsen: I see. Then in order that I may understand the Trial Examiner fully, for example, in the Examiner case, some evidence respecting what these 221 card signers—the type of operations in which they engage should be introduced in the record?

Trial Examiner Kennedy: That is my interpretation of the telegram that I received from Mr. Pratt. I suppose it is possible one witness could do that—maybe it would take ten witnesses and it might take 221. I don't know.

Mr. Mouritsen: I will see what can be done in that regard, Mr. Examiner. However, I would have to consult with the Petitioner at some length to ascertain more fully just what is available and what can be secured very shortly.

Trial Examiner Kennedy: Yes. And I also suggest that you communicate with Washington, Mr. Mouritsen, and find out what their views on that are.

Mr. Mouritsen: I see. [1706]

NICHOLAS VOLANTY

called as a witness by and on behalf of the Respondent, the Los Angeles Examiner, being first duly duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Hall): Mr. Volanty, what is your business or occupation?

A. It is P. M. street manager, Los Angeles Examiner.

Q. How long have you been P. M. street manager for the Los Angeles Examiner?

A. About five years.

Q. What are the boundaries of your district?

A. Ninth Street to Hollywood Boulevard, Normandy to Franklin, Gower to Sunset, back down on Sunset, and I believe my last spot is at Sunset and Gower.

Q. Has that been your district for at least a year last past? [1707]

A. Longer than a year.

Q. Are you acquainted with a man named Charles Seklemian, S-e-k-l-e-m-i-a-n?

A. Yes, sir.

Q. Does he sell Examiners within your district? A. Yes.

Q. Does he sell them at a spot at Sunset and Western? A. Yes.

Q. By the way, in referring to this man we mentioned, what do you usually call him?

A. Oh, he is generally known as "Bushy."

Q. Bushy? A. Yes, sir.

(Testimony of Nicholas Volanty.)

Q. Then, if the Examiner please, I will call him "Bushy" because I find it impossible to pronounce his last name.

Did you have a conversation with Bushy last Friday evening, which would be June 21, 1940?

A. Well, I have a conversation with him every night.

Q. Do you remember a conversation with him last week in which there was mention made of the number of Peach editions that he had sold?

A. Yes.

Q. When, to your observation, did that conversation occur?

A. About 25 minutes of 10:00.

Q. Do you remember the day? Can you place the day? [1708]

A. Not necessarily. It could be most—I think it was Friday. I am pretty sure it was Friday.

Q. Friday night? A. Yes.

Q. What did you say to Bushy and what did he say to you at the first conversation you had with him that night?

Mr. Mouritsen: Could we have the place fixed?

Q. (By Mr. Hall): Where did this conversation occur?

A. At Sunset and Western.

Q. All right. What was said?

A. I believe I asked him how many he had left. He told me 26 or 29; I don't remember exactly which one it was. I told him I thought that was

(Testimony of Nicholas Volanty.)

quite a few out of the 50. He ordinarily sold approximately 50 and he would have six, seven, eight, nine or ten, or any number left, and I told him I thought that was an awful lot of papers. I said "Here's some Double C's"—that was the edition I was delivering at the time—"Do the best you can with what you have got left. I'll be back and pick them up later, whatever you don't sell."

Q. Was that all the conversation you had with him?

A. At that time I believe it was.

Q. Did you refuse at that time to trade him Peaches for Double C editions?

A. I gave him Double C editions and told him to do the best he could with the Peaches, and I would be back later to pick [1709] them up, about 10:00 or 10:15 or 10:20, whichever time I could make it.

Q. Did you have another conversation with this man at about 10:20 or 10:30 at the same location?

A. Yes.

Q. Did you in the course of that conversation say to him "So you put me behind the eight ball"?

A. No.

Q. Did he in the course of that conversation say to you, "What do you mean"? A. No.

Q. Did you in the course of that conversation say to him "You know what I mean"?

A. No.

Q. Did he in the course of that conversation

(Testimony of Nicholas Volanty.)

say, "Well, just explain yourself. You have no business to go shooting off your mouth"?

A. No.

Q. Did he say, "Now, wait a minute. I haven't shot off my mouth. Furthermore, I haven't done anything to hurt you"? A. No.

Q. Did you say "Yes, you have"?

A. No.

Q. Did he say then, "Well, what is it"?

A. No. [1710]

Q. Did you then say that he had got you behind the eight ball? A. No.

Q. Did you say, "If you don't watch your step, I'll have you behind the eight ball"? A. No.

Q. Did he then say, "Well, I still don't get what you mean"? A. No.

Q. Did you last week have any conversation with this man in which getting behind the eight ball was mentioned? A. No.

Q. Did you have any conversation with him last week in substance and effect like that which I have just read you? A. No.

Q. Did you on that occasion say to this man, "Don't forget. I'm your boss"? A. No.

Q. Did you in any conversation with that man that evening say, "You are an independent dealer, I bring your papers, you buy them off of me, you sell them. Don't forget I'm still your boss"?

A. No.

Q. Did any conversation like or similar to that

(Testimony of Nicholas Volanty.)

occur between you and this man at any time last week? A. Yes. [1711]

Q. When?

A. About 1:30 he asked me how much he had paid for his papers. I told him he paid 3 cents.

Q. Did you in the course of that 1:30 conversation tell him you were his boss? A. No.

Q. Did you ever tell that man that you were his boss?

A. I don't ever remember telling him anything like that, no.

Trial Examiner Kennedy: You spoke of a 1:30 conversation. What day was that?

The Witness: That was Friday he asked me that question.

Trial Examiner Kennedy: This last Friday?

The Witness: (No response.)

Q. (By Mr. Hall): That would be 1:30, would it not, on Saturday morning?

A. That is right.

Q. You did have a conversation with him about that time? A. Yes.

Q. Did you in the course of that conversation say, "Well, you are an independent dealer. I bring your papers and you buy and you sell them"?

A. I didn't tell him like that, no, that I know of.

Q. What was the conversation?

A. Well, he asked me how much he paid for his papers. I [1712] told him 3 cents apiece. I believe that is all I told him.

(Testimony of Nicholas Volanty.)

Q. Did you at that conversation you had with him at 1:30 on last Saturday morning threaten him?

A. No.

Q. Did you tell him you were going to hurt him?

A. No.

Mr. Hall: Take the witness.

Oh, just pardon me a moment, will you please?

Q. Did you at any time during September of 1939 pay anyone $4.50 or any other sum of money to take the place of this Bushy on that corner?

A. I never paid nobody $4.50 at any time.

Q. Then as I understand your testimony, you never paid any [1713] money at any time to any substitute or any other hustler, is that right?

A. No, sir.

Mr. Hall: All right. That is all.

Trial Examiner Kennedy: Now, wait a minute. Counsel asked you if that was right, and you said "No, sir." What did you mean?

The Witness: He asked if I had ever paid—at any time if I had ever paid anybody any money, at that time or any other time, and I answered No, sir, I never paid him any money.

Trial Examiner Kennedy: Cross examine.

Mr. Hall: I think the record is pretty clear now, your Honor. Thank you.

Cross Examination

Q. (By Mr. Mouritsen): How many editions of the paper do you take around that district?

A. On what day?

(Testimony of Nicholas Volanty.)

Q. On a week day?

A. On a week day? We have as a general rule four editions.

Q. What are they?

A. First, Peach; Second, Peach; Double CC and Three CCC midnight.

Q. Do you leave copies of each of those editions with Bushy every week night?

A. Yes, sir. [1714]

Q. You see him about four times a night?

A. More than that.

Q. On Saturday, do you see him oftener than that?

A. Wait a minute. About the same number.

Q. On Sunday any different?

A. Sunday it varies a little bit. Yes and no.

Q. Some two or three weeks ago, didn't the Sunday papers start to come out about an hour earlier than they had been coming out?

The Witness: The Sunday papers come out at the regular time.

Q. (By Mr. Mouritsen): I will ask you if the papers which come out Sunday did not start to come out an hour or so earlier than some, two or three weeks ago? A. Yes.

Q. How many newsboys do you have in your district?

A. I have a different number.

Q. On week nights, I mean?

A. Well, they vary. It is all according to how many they sell.

(Testimony of Nicholas Volanty.)

Q. Take the last week. How many newsboys on an average did [1715] you have each night?

A. Different nights I have a different number.

Q. And week nights you have a different number? A. Yes.

Q. How much does that vary?

A. All according to how many show up and how many do not show up.

Q. How many spots do you supply with papers in your district?

A. I couldn't say right off-hand.

Q. Do you have any idea at all?

A. Yes.

Q. How many? A. About twenty.

Q. Do you understand the use of the term "main spot"? A. Yes.

Q. How many main spots do you have?

A. Twenty.

Q. How many off spots?

A. I couldn't say.

Q. Have you no idea? A. Yes.

Q. How many? A. Around thirteen.

Q. And was there any variation last week in the number of your main spots? [1716]

A. No.

Q. Was there any variation in the number of boys who worked on those main spots?

A. No.

Q. Do you have any traffic spots?

A. Yes.

(Testimony of Nicholas Volanty.)

Q. About how many?

A. About fifteen or sixteen.

Q. And what do you understand by a "traffic spot"?

A. That is a man who stands out in the traffic, in the middle of the street, or any place he wants to out there, and sells papers.

Q. Now, with Bushy, you see him an average of four times a night on week nights; is that correct?

A. Sometimes more.

Q. Well, you see him about 28 times a week, at least; isn't that correct?

A. Sometimes more, sometimes less.

Q. Do you recall any other conversation you had with him last week? A. On a Friday?

Q. No. Any part of the week?

A. I talk to him every night.

Q. You have a conversation with him every night; is that correct? [1717]

A. Yes.

Q. Sometimes more than one?

A. Sometimes five or six.

Q. And you are certain that last week you do not recall any conversation in which getting behind the eight ball or being behind the eight ball was discussed? A. No.

Q. How about Saturday? A. No.

Q. How about the week before that?

A. No.

Q. What you are trying to say is that you do not recall having had the conversation?

(Testimony of Nicholas Volanty.)

A. What I did say is that I didn't say anything about an eight ball to the man.

Q. I see. You are sure of that?

A. Yes, I am sure of it.

Q. Do you recall anything that you said in any of these conversations with him, any one of these, when you spoke with him last week?

A. Why, Friday night I told him that Saturday, this coming Saturday, I would like to have my money on the Double C edition and the Three C edition, and to give me all the money he could at that time; he could give me $3.00, $4.00, $5.00, $2.00, $8.00—anything he wanted to; and the next edition was the [1718] same thing.

Q. And that had been a change—strike that.

Prior to that time you had been checking in at the end of the evening; is that correct?

A. Not every evening.

Q. Well, on most evenings he had; is that correct.

A. Not most evenings. Any night that he might have too much money or he couldn't get rid of his silver or anything, I might ask him for a little money.

Q. How did the some twenty newsboys find out that the paper was going to change, the paper that comes out on Sunday was going to come out an hour earlier?

A. It was posted on the bulletin board.

Q. Where? A. At the Examiner alley.

(Testimony of Nicholas Volanty.)

Q. Do all of those boys ride with you from the Examiner alley? A. No.

Q. How many of them do?

A. I couldn't say right off-hand.

Q. How many do you usually take?

A. I couldn't say.

Q. Any idea? A. No.

Q. Do you take one? [1719]

A. Sometimes I don't take any.

Q. Do you sometimes take one?

A. Sometimes I don't take any.

Q. Sometimes you don't take any. Sometimes do you take one newsboy out with you?

A. Sometimes I don't take any.

Q. Did you ever take more than one?

A. Yes.

Q. How many? What is the largest number you can recall having taken with you within the last year?

A. As a rule—I don't recall ever taking more than one or two.

Q. Do you ever recall having taken more than two? A. No.

Q. Do these other newsboys whom you do not take out, do they come down to the Examiner alley before they go out to their spots?

A. Sometimes.

Q. And where in the—strike that.

These main spot boys that you have in your district, are they, as a general rule, older men?

(Testimony of Nicholas Volanty.)

A. They can be any age.

Q. Do you have any young schoolboys——

A. (Interrupting) No.

Q. (Continuing) ——working those main spots? [1720]

A. No.

Q. In the main, they are older, more mature men, aren't they?

A. Some are young and some are old.

Q. They are all men? A. Yes.

Q. And some of them—have you put any on recently, on those main spots? A. Yes.

Q. How recently?

A. Oh, maybe two weeks.

Q. Do you recall who, or the spot you put this man two weeks ago?

A. Yes. Beverly and Western.

Q. How many off spots are there around Beverly and Western? A. Two.

Q. Did this man ever work on the main spot before? A. Yes.

Q. In your district? A. Yes.

Q. Where had he worked before?

A. Different spots.

Q. Did you change him around a number of times?

A. I put him any place that happened to be open.

Q. How long have you been in that district? [1721]

(Testimony of Nicholas Volanty.)

A. I think it is three years or four years—three years.

Mr. Mouritsen: I think that is all.

Redirect Examination

Q. (By Mr. Hall): You did not tell those boys that rode out from the alley with you that they had to ride with you, did you? A. No, sir.

Q. You did not tell this man that took that main spot at Beverly and Western that he had to take that spot, did you? A. No, sir.

Q. Did you ask him to take it?

A. Well, the spot was open for the evening, I think it was, and later on the man that had worked there regularly quit. He heard about it and he came down to the alley and asked me if he could have that spot; he would like to have it. I told him I didn't see any reason why he shouldn't have it, and I told him how many papers the corner ordinarily sold; and I told him if he would like that spot, I would be glad to give it to him. [1722]

Q. Is it or is it not true that, as a general practice, you will check in oftener at a given spot with respect to sales of a Sunday paper than you will with respect to sales on a daily paper?

A. With respect to sales of the Sunday paper, your bill can be as much as six, seven, eight, or according to how many they sell, that much more money on a Saturday than there would be on a week day. [1723]

(Testimony of Nicholas Volanty.)

Q. (By Mr. Hall): Is it true that, as a general practice, and referring to a given spot, the sales, the money from sales of a Sunday paper will be very much larger than they will from the sales of a daily paper? A. Yes. [1724]

Q. As a matter of practice, isn't it a fact that, since the hustler is collecting more for the sales of the Sunday papers, you collect it from him more frequently—— A. Yes.

Q. (Continuing) —— for the Sunday sales than you would on daily sales? A. Yes.

Q. That is a matter for your own protection, isn't it? A. Yes.

Mr. Hall: That is all.

Trial Examiner Kennedy: Anything further?

Recross Examination

Q. (By Mr. Mouritsen) Mr. Volanty, you are the only person in your district who puts newsboys on the corners for the purpose of handling the Examiner, are you not?

A. I don't understand that.

Q. Does anyone else put Examiner newsboys on the corners in your district? A. No.

Mr. Mouritsen: You may inquire.

Mr. Hall: You may step down, sir.

Trial Examiner Kennedy: Just a minute.

What does this expression, "behind the eight ball" mean to you?

The Witness: I imagine that could mean most anything, [1725] one pool ball behind the eight ball.

(Testimony of Nicholas Volanty.)

Trial Examiner Kennedy: What does it mean when it is used towards an individual?

The Witness: Well, if I used that expression behind an individual why I would imagine that he was behind a colored man.

Trial Examiner Kennedy: Behind what?

The Witness: A colored man.

Trial Examiner Kennedy: A colored man?

The Witness: A colored man; behind a black man.

Trial Examiner Kennedy: Do you ever use that expression?

The Witness: I don't remember.

Trial Examiner Kennedy: You never remember using it at all?

The Witness: Oh, I may have used it and then forgot about it.

Mr. Cosgrove: May it be stipulated that the testimony of the witness Nicholas Volanty has no application to the Los Angeles Times' case, Mr. Mouritsen?

Mr. Mouritsen: That may be so stipulated.

[1726]

Mr. Compton: May the same stipulation be made on behalf of the Los Angeles Evening Herald and Express, Mr. Mouritsen?

Mr. Mouritsen: It may be so stipulated.

Mr. L. B. Binford: And the same stipulation

with respect to the Stockholders Publishing Company, Mr. Mouritsen?

Mr. Mouritsen: It may be so stipulated. [1727]

After Recess

(Whereupon the hearing was resumed, pursuant to recess, at 1:30 o'clock p.m.)

ABRAHAM PIERCE

called as a witness by and on behalf of the Respondent, Los Angeles Examiner, being first duly sworn, was examined and testified as follows:

Q. (By Mr. Hall) You are one of the district men in charge of night sales for the Los Angeles Examiner, are you, Mr. Pierce? A. I am.

Q. How long have you been a district man acting in that way? A. Oh, going on five years.

Q. So far as night sales are concerned, what is your district? A. Main Street.

Q. Main Street, Los Angeles City? [1728]

A. Yes, Los Angeles.

Q. Is there now a man at Eighth and Main Streets selling editions of the Los Angeles Examiner after 6:00 o'clock at night?

A. I have at the present time.

Q. At the present time? A. Yes.

Q. How long has there been a night news seller selling Los Angeles Examiners at that location?

A. Since 1939.

(Testimony of Abraham Pierce.)

A. Yes; just about before Santa Anita opens up.

Q. Well, Santa Anita opened up in the late fall or early winter of 1938, let us say December, 1938?

A. Correct.

Q. And it was about that time that there was for the first time a new vendor selling Los Angeles Examiners at that location; is that right?

A. I had a woman there selling newspapers there.

Q. Yes; that is correct, is it? A. Yes.

Q. The first person, then, that I understand that was selling papers there was a woman?

A. Correct. A woman with crutches.

Q. A woman with crutches? [1729]

A. Yes, sir.

And she started to sell papers at that location in December of 1938; is that right? A. Correct.

Q. Did that woman stop selling her papers at that location? A. She did.

Q. Did somebody else then commence selling Los Angeles Examiners at that location?

A. Yes.

Q. Who was that?

A. The man that I have there at the present time.

Q. The man that is there at the present time?

A. Yes, sir.

Q. So that if I understand your testimony correctly, during the five years that you have been district manager, there have been only two people

(Testimony of Abraham Pierce.)

selling Los Angeles Examiners after 6:00 o'clock in the evening——

A. (Interrupting) Correct.

Q. (Continuing) ——at that location?

A. Yes.

Q. One of those persons is a woman and one is the man who is selling there at present?

A. Correct.

Q. Am I right about that?

A. Correct. [1730]

Q. Now, during the month of May, 1938, did you tell any hustler that if he would stay at any location, you would guarantee him a dollar a night?

A. No, I have not.

Q. Did you ever tell a hustler that?

A. No.

Q. Did you ever tell a hustler that he was not to handle the Los Angeles Times?

A. No, I have not.

Q. Did you ever give a hustler a dollar out of your own pocket when he had not earned it because of some guarantee you made? A. No.

Q. Is it true that the hustlers in your district get their money from what they make, the difference that they make between what the papers cost them and what they sell them for? Is that the way they make their money? A. Yes.

Q. You do not give any hustlers any money?

A. No.

Q. You have not in the past?

A. No, I never have.

(Testimony of Abraham Pierce.)

Q. Did you ever tell anyone that you would have to or he could not sell Los Angeles Examiners any more at Eighth and Main Streets because you were going to put back on that spot [1731] the lady that had had it?

A. No, I haven't. The first time I have opened up the corner was a lady with crutches, and then I put a man, and I have a man at the same time, the present man.

Q. Did the lady with crutches finally quit selling papers at that corner of her own accord?

A. Of her own accord.

Q. And the man who then started selling papers at that location is the man who is there now; is that right? A. Correct.

Q. Do you remember taking a man around in your car, looking for a spot or location, and finally telling the man that the only spot that you had or where he could sell papers was a bus station at Sixth and Main Streets?

A. I never take anyone in my car.

Q. Did you ever tell a hustler that he could sell Los Angeles Examiners at a bus station at Sixth and Main Streets and——

A. (Interrupting) No.

Q. You never did? A. No.

Q. Well, did you ever tell a man that if he would sell the papers at that or any other location, you would give him 15 papers and 50 cents if he would stay there? A. No.

(Testimony of Abraham Pierce.)

Q. Is there a spot where there is a man selling Los Angeles [1732] Examiners, the bus station at Sixth and Main Streets?

A. There is one at Sixth and Main and one at Sixth and Los Angeles, also, two bus depots.

Q. What corner is that at Sixth and Main?

A. Sixth and Main is the P. E. Depot, or a red car.

Q. Well, that is not a bus station?

A. No. And the bus station is at Sixth and L. A., the Greyhound.

Q. The bus station is Sixth and Los Angeles?

A. That is correct. Not at Sixth and Main.

Q. When I spoke to you about the opening of Santa Anita in December, 1938, you did not understand that I was referring to the first time Santa Anita opened up for racing, did you?

A. No. The first time——

Q. (Interrupting) As a matter of fact, Santa Anita first opened up for racing several years before that, didn't it?

A. Yes, but what I am trying to have understood, the first time I opened the corner was in 1938, in November, the last part of November. I put an old woman there, crippled, with crutches.

Q. You are referring now to the corner at Eighth and Main Streets?

A. Eighth and Main, correct.

Q. Do you know a man named Celestino Sanchez?

(Testimony of Abraham Pierce.)

A. Well, I don't know his last name. I know him by his [1733] first name.

Q. What do they usually call him?

A. Solly.

Q. Solly? A. Correct.

Q. He used to sell Los Angeles Examiners down at the old Southern Pacific depot, didn't he?

A. Correct.

Q. After that, he sold Los Angeles Examiners at Fifth and Main Streets, didn't he?

A. Correct.

Q. Did you ever say to Mr. Celestino Sanchez, otherwise known as "Solly," while he was selling paper at Fifth and Main Streets, that he would be supposed to distribute Los Angeles Examiners to off spots at First, Second, Third and Fourth Streets on Main Street?

A. No. I give them all out myself, individual.

Q. Has that been your practice for the last couple of years?

A. Ever since I have been down there in the last four years.

Q. In other words, you distribute to those spots I have just mentioned, yourself?

A. Myself, personally.

Q. During any of the time that Mr. Sanchez was selling Los Angeles Examiners at the old Southern Pacific depot, did you tell him that he must stuff any papers? [1734] A. No.

Q. What do you understand by the expression "stuffing papers"?

(Testimony of Abraham Pierce.)

A. Stuffing the papers? Well—insert papers inside of the paper.

Q. Putting an insert in the paper?

A. Correct.

Q. Now, do you recall the time when the American Legion Convention came to Los Angeles?

A. Correct.

Q. It has been referred to in this hearing as occurring in September of 1938. A. Correct.

Q. Do you recall that there was some kind of a supplement or insert published in connection with the Los Angeles Examiner at that time?

A. There was.

Q. Did you tell this Mr. Sanchez to stuff that supplement in the papers before he sold them?

A. No, I have not.

Q. Will you tell us about that situation and just what was done with respect to that supplement?

A. Well, we expected Mr. Hearst's organization of the American Legion from New York, and I was there present, I was giving them out myself individually, and papers also—— [1735]

Q. (Interrupting) This supplement, you mean?

A. Yes. It was never in any papers at all. I seen that everyone got one individual.

Q. In other words, those supplements were given to those various people separate from the Los Angeles Examiner newspaper itself; is that correct?

A. Correct. I was giving them myself.

(Testimony of Abraham Pierce.)

Q. At the time of that convention did you tell Mr. Sanchez that he must deliver a lot of papers free to a certain delegation that came in on the train?

A. No. I have not said anything like that at all.

Q. Did he do that? A. No, he had not.

Q. He had nothing to do with that?

A. Nothing to do with that whatever.

Q. At or near the corner of Fifth and Main Streets, did you ever say to Mr. Sanchez anything like this, in substance or effect: "Jesus Christ, Solly, you shouldn't get off the spot. Don't you know that we have got checkers around here, and if they catch you off the spot, that will mean my job, and I will have to let you go"?

A. I never said anything to the man at all. He went to his own corner work. I never said boo to him.

Q. Did you at any time while Mr. Sanchez was working at Fifth and Main Streets say to Mr. Sanchez at or near Fifth [1736] and Main Streets, in substance or effect, the following: "The spot has got to be covered, regardless of whether there is one paper sold here"? A. No.

Q. You did not say that? A. Not at all.

Q. You didn't say anything like that?

A. No.

Q. When Mr. Sanchez was selling Los Angeles Examiners at Fifth and Main Streets, tell us how you handled the matter, as far as you were concerned, of these advertising placards or war maps?

(Testimony of Abraham Pierce.)

A. Well, when anything would come up like that, why I would take them and keep them in the car myself, and when I got through with my work, why I took them around to the different boys that was on the corner, or laid them down myself, or would hang them up myself on the corners, on the posts, on these lights.

Q. Did you ever say to Mr. Sanchez while he was selling Los Angeles Examiners at or near Fifth and Main Streets anything like this in substance of effect: "Be sure that these placards are on display, and that these maps have to be returned at the end of the night"? A. No.

Mr. Hall: You may take the witness. [1737]

Cross Examination

Q. (By Mr. Mouritsen) Mr. Pierce, how many issues of the paper do you handle on a week-end?

A. Four.

Q. You have stated that your district is Main Street; is that correct? A. Correct.

Q. And between what boundaries?

A. All the way from Ninth Street to Market Street, and right in front of this building here in back.

Q. From Ninth?

A. To here and Market Street.

Q. And how many main spots do you have on that Street?

A. They are all main spots, as far as I know.

Q. How many are there?

(Testimony of Abraham Pierce.)

A. Well, I don't keep track of how many they are. I distribute my papers to them.

Q. You have no idea how many main spots there are in that area? A. No.

Q. Do you understand what a "main spot" is?

A. It is a spot, that is all I know, whether it's the main spot or not. I know there is a boy there selling papers; that is all I know; it's a spot.

Q. About how many spots do you have in that area? [1738]

A. Well, I don't know exactly. I never did keep track of them.

Q. Do you have any idea?

A. No, I haven't.

Q. Do you have any idea how many stops you make a night to put down papers?

A. I make a lot of stops.

Q. Do you have any idea how many stops you make a night on one edition, to put out papers on one edition? A. Maybe sixty or seventy stops.

Q. And at each of those stops, you put out papers for newsboys?

A. No, not exactly. I stop at the red light and the green light and boulevard stops.

Q. At how many places do you stop in that area for the purpose of putting out newspapers to the newsboys? A. About fifty.

Q. At the corner of Fifth and Main, to how many newsboys do you supply papers on a week night?

(Testimony of Abraham Pierce.)

A. Well, the boys there. I only have to distribute to five.

Q. Do you make more than one stop there?

A. One stop.

Q. Do you throw off the papers at one place?

A. No. [1739]

Q. What do you do there?

A. I call them by their number, Fifth, Fourth, Third, Second and First.

Q. Then what do you do?

A. I give them their papers.

Q. Well, is there only one boy who sells at Fifth and Main? A. Five.

Q. How do you distribute your papers to those boys who sell at Fifth and Main?

A. I give them to them myself, individual.

Q. In other words, the boys from these other corners that you have mentioned come from Fifth and Main and get their papers also; is that correct?

A. No. I go to their corners.

Q. I see.

And which other corners do you go to on Main Street? Do you go to First?

A. I go to First Street and come all the way up here to Market Street.

Q. You make a stop at First and distribute the papers there to the Newsboys on First?

A. No; only one man there.

Q. Give them to one man at First and Main?

(Testimony of Abraham Pierce.)

A. Correct.

Q. And at Second and Main? [1740]

A. The same thing.

Q. Just one man? A. One man.

Q. And at Third and Main? A. One man.

Q. Fourth and Main? A. One man.

Q. Fifth? A. Five men.

Q. And they all work on that corner?

A. They all work on that corner, individual.

Q. How about Sixth and Main?

A. Two men.

Q. And at Seventh and Main?

A. Three men, individual.

Q. Eighth and Main? A. One, individual.

Q. Ninth and Main? A. One, individual.

Q. Do you stop at Temple?

A. No, I don't.

Q. Do you stop at any other place other than the corners I have enumerated; that is, from First and Main to and including Ninth and Main? [1741]

Q. (By Mr. Mouritsen): That is, for the purpose of giving newspapers to other newsboys?

The Witness: I do.

Q. (By Mr. Mouritsen): Where else do you stop?

A. All the way down Fifth Street.

Q. All the way down Fifth Street between what boundaries? A. To Central.

Q. And how many corners are there from Main to Central?

(Testimony of Abraham Pierce.)

A. I don't remember exactly how many corners down there at all. I just make about ten stops—five stops along through there.

Q. What is the first street below Main Street? That is Los Angeles, isn't it?

A. Correct. [1742]

Q. Do you stop at Los Angeles? A. I do.

Q. How many newsboys do you give papers to on Los Angeles? A. One individual.

Q. There are no others who sell Examiners on that corner? A. No.

Q. All right.

Now, what is the next street?

A. Oh, I don't know down there, the streets there, there is so many of them.

Q. You have been handling this district for five years; is that right? A. Correct.

Q. You do not know the next street below Los Angeles on Fifth Street?

A. Well, I don't know the names of the streets.

Q. Do you know any of these other streets between Los Angeles and Central at which you stop and give papers to newsboys?

A. All my newsboys get their papers, individual, through me and no one else.

Q. That is what I understand, Mr. Pierce, and I want to see just how definite your recollection is on other matters.

Now, can you tell me how many streets there are between Los Angeles and Central at which you stop

(Testimony of Abraham Pierce.)

A. I don't know how many streets there is down there. I don't count the streets; I just count my papers and give them out to my newsboys.

Q. To your newsboys. All right.

You don't know the streets, then, between Los Angeles and Central where you leave papers for newsboys; is that correct?

A. Why, I know the names of the streets, as far as the streets.

Q. Oh, you know the names of the streets.

Now, tell us the names of those streets where you stop and leave papers with newsboys?

A. Fifth and Wall.

Q. How many newsboys there? A. One.

Q. All right. Next?

A. Fifth and San Pedro.

Q. How many newsboys there?

A. One. Fifth and Crocker.

Q. How many newsboys there? A. One.

Q. Next?

A. And the other one, I give the papers to another boy and he goes down the street, selling them from each side of the street. [1744]

Q. And on what street is that?

A. I give him them and he starts off at Fifth and San Pedro.

Q. Do you operate on any other area other than on Main Street?

A. Seventh; Sixth and Seventh.

(Testimony of Abraham Pierce.)

Q. Sixth and Seventh. Well, now, let us see. On Seventh where do you sell?

A. How is that?

Q. On Seventh, where do you go?

A. Seventh and Central.

Q. And these same cross streets, is that right?

A. Correct.

Q. Los Angeles; Wall, San Pedro and Crocker?

A. Crocker.

Q. On Seventh and Los Angeles how many boys do you distribute papers to?

A. I have none.

Q. Beg pardon?

A. I don't distribute no papers.

Q. Didn't you testify that you distributed papers along Main Street, at first?

A. Yes, but not Los Angeles Street.

Q. At the corner of Seventh and Los Angeles, do you or do you not distribute papers to a newsboy? A. No.

Q. You do not? All right. [1745]

Now, on Seventh and Wall, do you?

A. No.

Q. You do not? A. No.

Q. Well, where do you distribute them on Seventh Street? A. One corner.

Q. Where?

A. Seventh and Central.

Q. No other corners in between?

A. No corners between.

(Testimony of Abraham Pierce.)

Q. And where on Sixth Street do you distribute? A. Sixth and San Pedro.

Q. Just one corner there? A. Correct.

Q. Now, any place else other than on Main Street where you distribute papers to newsboys?

A. No.

Q. You say there are fifty or sixty newsboys within the area that you serve, to whom you distribute newspapers?

A. I never said "fifty or sixty newsboys." I said "fifty or sixty stops." You asked me the stops I make.

Q. Very well.

How many newsboys are there in the area that you handle as district manager for the Los Angeles Examiner? A. I don't know. [1746]

Q. How long, Mr. Pierce, does it take you to make this round, make a single round of your district with one edition of the paper, on an average, making 50 or 60 stops and maybe more for red and green lights?

A. It all depends on how fast I go.

Q. All right.

As a general rule how long does it take you?

A. About two hours.

Q. And then you have four editions a night, is that correct? A. Correct.

Q. And where do you check these boys in?

A. On their own corners.

Q. How long does that take you?

(Testimony of Abraham Pierce.)

A. I don't know how long it takes me. I never kept track of what time it takes.

Q. Where do you check them in?

A. On any of the corners.

Q. Do any of the newsboys check in to you at the Belmont Cafe?

A. Only one corner, Fifth and Main, checks in there.

Q. That is where Sanchez checked in to you, is that correct?

A. I don't know his last name.

Q. Celestino?

A. I don't know even that part of his name. [1747]

Q. You don't know that part of his name?

A. No.

Mr. Hall: Popularly known as "Solly."

Mr. Mouritsen: Well, I was just wondering——

Mr. Hall: I will stipulate Celestino Sanchez is popularly known as "Solly," and will further stipulate that you may use the term "Solly" in examining this witness.

Mr. Mouritsen: I was just trying to find out how the witness knew whom you designated when you designated him as Celestino Sanchez?

Q. Mr. Pierce, do you recall the newsboy known to you as Solly, who operated on Fifth and Main?

A. I do.

Q. That is the name you knew him by?

A. That is the name I knew him by.

(Testimony of Abraham Pierce.)

Q. You did not know his name was Sanchez?

A. No.

Q. You did not know his name was Celestino?

A. No.

Q. During what period did this newsboy known as Solly operate on Fifth and Main?

A. About fifty or sixty days.

Q. During what period?

A. I don't remember exactly what period it was.

Q. Do you remember, approximately? [1748]

A. No.

Q. You have no idea? A. No.

Q. It might have been the first year that you started in this district five years ago; is that correct? A. No.

Q. It could not have been then? A. No.

Q. How about the fourth year? A. No.

Q. Well, you do have some idea then——

A. (Interrupting) I know it was last year, but I don't remember the date or the month.

Q. It might have been January, 1939?

A. It might have been.

Q. Do you know on an average how many miles you cover in making a single round on the district that you have? A. No.

Q. You have no idea of that?

A. No. I have no speedometer on my car.

Q. Do you receive any mileage from the Examiner for the use of your car?

A. I don't know as to that. [1749]

(Testimony of Abraham Pierce.)

During September, 1939, you received certain war maps; is that correct?

A. I don't understand you.

Q. Well, you understood Mr. Hall's reference to certain maps; is that correct?

A. Yes. We get a map—I get it; no one else gets it.

Q. Now, what do you understand Mr. Hall referred to when he asked you about certain maps?

A. I get the maps myself, individual, and put them on the corner myself, individual, and put them around a light pole myself with a piece of wire.

The Witness: And no hustler does that for me at all. [1751]

Q. (By Mr. Mouritsen): At the time that you put Solly on Fifth and Main—prior to that time you say he had been selling at the old S. P. depot; is that correct?

A. I didn't—I didn't put Solly at Fifth and Main at all. They were closing up the S. P. Depot, and the corner of Fifth and Main was open. He came to me and he says, "Abe, how would I—I would like to have Fifth and Main." He says, "It's open."

I just told him how many papers it does and so on. I didn't put him there.

Q. Did you tell him that he could sell on that corner?

A. I didn't tell him he could sell on the corner; I just told him how many papers the corner would sell. That's all I told him.

(Testimony of Abraham Pierce.)

Q. Well, after that time, he showed up and sold at Fifth and Main, didn't he?

A. Correct. He sold at Fifth and Main.

Q. Well, is there any connection with the conversation that you had with Solly and his later showing up and selling at Fifth and Main?

A. No.

Q. No connection between them? [1752]

A. No.

Q. Did you tell anyone else that the corner of Fifth and Main was open?

A. No. He was the only one that asked me.

Q. Well, for what did he ask you?

A. Well, he said he had a family to take care of.

Q. Well, as a matter of fact, he asked you if he couldn't sell at Fifth and Main, didn't he?

A. No, he didn't say that.

Q. What did he say?

A. He asked me, he says, "The corner of Fifth and Main is open," he says, "I wonder if I could have it."

Q. What did you say?

A. I just told him, I said, "It does so many papers."

Q. Is that all you said? A. That's all.

Q. Well, what are your duties, Mr. Pierce, as night district man? What are your instructions? What are you supposed to do?

A. I don't get no instructions. I use my own head for instructions.

(Testimony of Abraham Pierce.)

Q. In other words, at the time when you commenced operating on this district five or more years ago, no one told you what you were supposed to do in that district?

A. Well, that was a different ruling down there than it is [1753] now. Now they don't say nothing to you.

Q. When did they change?

A. They changed hands.

Q. When was that?

A. I don't remember. I don't know that.

Q. What do you mean by "they changed hands"?

A. Well, there is new bosses there than there used to be.

Q. Well, you have no understanding of what you are supposed to do? A. No.

Q. Well, what do you do?

A. I just do my work; that is all.

Q. All right.

Now, what is your work?

A. My work? Just give out my papers to my hustlers on Main Street.

Q. Well, now, where do you get—where did you get the understanding that that was your work?

A. Well, I got that understanding about five years ago.

Q. Do you have any understanding as to whether you are to deliver more than one edition to these hustlers? A. No.

(Testimony of Abraham Pierce.)

Q. In other words, you could just deliver them one or the four editions that you had; is that correct?

A. I just deliver my papers. [1754]

Q. In other words, you do not have to deliver any papers at all to these hustlers; is that correct?

A. I just deliver my papers to them; that is all.

Q. Well, there is nothing compulsory about that?

A. I just deliver my papers to my hustlers; that is all.

Q. Now, on the occasion when you delivered—on the occasion when this supplement for the American Legion came out, approximately how many copies of that did you receive?

A. I don't remember.

Q. Do you have any idea? A. No.

Q. Do you have any idea how many you passed out? A. No.

Q. Do you have any idea of how long it took you? A. No.

Q. Do you have any idea of where you passed them out?

A. Well, I know where I passed them out. Fifth and Central.

Q. Fifth and Central.

You do not know how long it took you?

A. No.

Q. Did anyone else help you to do that?

A. Myself.

Q. Just yourself? A. Yes.

(Testimony of Abraham Pierce.)

Q. Do you recall the—strike that. [1755]

You did not pass any of those out at the S. P. Depot; is that correct?

A. I passed them out myself.

Q. Do you understand the question that I asked you?

A. I answered the question. I answered it to you.

Q. Did you pass any of them out at the S. P. Depot?

A. I passed them out at the S. P. Depot myself.

Q. I see.

Mr. Mouritsen: Nothing further.

Redirect Examination

Q. (By Mr. Hall): As a matter of fact, do you recall that there was a man that worked at the old—that sold Los Angeles Examiners at the old Southern Pacific Depot who later, and during last year, came up and sold Examiners at Fifth and Main Streets; isn't that right? A. Right.

Q. As a matter of fact, it was only one of those men; isn't that right?

A. One of those men.

Q. The old Southern Pacific Depot was located at Fifth and Central, wasn't it?

A. At Fifth and Central, correct.

Q. And that depot was closed up, wasn't it, some time last year when they opened the new Union Terminal? A. Correct. [1756]

(Testimony of Abraham Pierce.)

Trial Examiner Kennedy: Just a minute. Just a minute, Mr. Witness.

Is there a bus station at the corner of Sixth and Main Streets in Los Angeles?

The Witness: No.

Trial Examiner Kennedy: How about the Santa Fe Trailways bus station?

The Witness: I don't know the name of the bus. There is only but one bus depot that I know of. That is at Sixth and Los Angeles, the Greyhound Depot.

Trial Examiner Kennedy: Do you know the Southwest corner on Sixth and Main Streets?

The Witness: The south—that would be the Santa Fe, but I have nothing to do with that.

Trial Examiner Kennedy: You know there is a bus station there, don't you?

The Witness: Well, not at the corner; it is between the block, between Seventh and——

Trial Examiner Kennedy (Interrupting): Is there any bus [1757] station—pardon me.

The Witness: It is between Seventh and Sixth, in the middle of the block.

Trial Examiner Kennedy: The waiting room is on the corner of Sixth and Main; is that not correct?

The Witness: Well, I don't know. I never went over there, to tell you the truth, Mr. Examiner.

Trial Examiner Kennedy: Do you know whether there is a bus station at the corner of Fifth and Los Angeles?

(Testimony of Abraham Pierce.)

The Witness: Fifth and Los Angeles?

Trial Examiner Kennedy: Yes.

The Witness: Yes, I do.

Mr. Hall: What was the location that the Examiner mentioned of a bus station, Sixth and ——

Trial Examiner Kennedy: Sixth and Main Streets.

Mr. Hall: And Main Street. What was the corner; the southwest, was it?

Mr. Mouritsen: That is right.

Trial Examiner Kennedy: Southwest corner. [1758]

Q. (By Mr. Hall): As a matter of fact, there is a large office building on the northwest corner of Sixth and Main Streets, isn't there?

A. A large——

Q. (Interrupting): Office building?

A. Yes.

Q. There used to be a large banking room——

A. Correct.

Q. (Continuing) ——in the ground floor of that building; is that correct? [1759]

A. Correct.

Q. Do they still use that as a banking room, that big ground-floor room there on the corner?

A. Well, to tell you the truth, I don't remember. I never go through that direction at all. I don't

Q. Where, to the best of your recollection, is the pay any attention to that.

(Testimony of Abraham Pierce.)

nearest entrance to a bus station on that southwest corner?

A. Well, the southwest corner, it is only a restaurant.

Q. A restaurant? A. Correct.

Q. The busses don't come in and go out from there, do they? A. No.

Mr. Cosgrove: Before we take that recess, Mr. Examiner, may we have a stipulation with Mr. Mouritsen that the testimony of the witness Abraham Pierce has no application to the Los Angeles Times?

Mr. Mouritsen: It may be so stipulated.

Mr. Howard Binford: And the same as to the Stockholders [1760] Publishing Company?

Mr. Mouritsen: It may be so stipulated.

Mr. Compton: The same stipulation as to the Los Angeles Evening Herald and Express, as to the Times?

Mr. Mouritsen: So stipulated.

JOHN G. WEISBECKER

recalled to the stand by and on behalf of the Respondent, Los Angeles Examiner, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

Q. (By Mr. Hall) You are the Mr. Weisbecker who was called to the stand and testified on the 22nd day of June, 1940?

A. I think that is correct; yes, sir.

Q. And you testified at that time, as I recall, Mr. Weisbecker, that you are manager of circulation at the Los Angeles Examiner?

A. Yes, sir.

Q. Now, I am going to read into the record a definition of a certain class or category of newsboys, and I am going to refer to the newsboys that are within this definition, for brevity and convenience, as "Street Sale Newsboys." [1761]

The definition reads as follows:

"All newsboys engaged in the street sale of the Los Angeles Examiner at established spots four or more hours per day, five or more days per week, within the city of Los Angeles, California, except temporary newsboys.

"An 'established spot' is a place where a newsboy is engaged in the street sale of the Los Angeles Examiner five or more days a week for a period of six consecutive months or more.

"A 'Temporary Newsboy' is a newsboy who has

(Testimony of John G. Weisbecker.)

been engaged in the street sale of Los Angeles Examiners at established spots, for 30 days or less."

Now, I direct your attention to Board's Exhibit 18, which is entitled "An Agreed Statement of Facts," and I am handing you that Exhibit, and will ask you further with reference to that Exhibit and the definition of "Street Sale Newsboys", which I have read into the record. You will note that Paragraph 3 of that agreed statement of facts, page 5, states that: "Los Angeles Examiner is distributed through the State of California, but principally in the Metropolitan Area of Los Angeles, at its last audit bureau of circulation figures, has a daily, exclusive of Sunday, average circulation of 213,460 copies, only 3,743 copies of which are sold or distributed outside the State of California."

And then further on in the same paragraph of the same [1762] Exhibit, on Page 6, you will note that it is stated that:

"The Los Angeles Examiner has a Sunday average circulation of 566,175 copies, only 46,901 copies of which are sold or distributed outside the State of California."

Now, directing your atfention to the 3,743 copies of the daily issue which are sold or distributed outside the State of California, and the 46,901 copies of the Sunday issue or issues which are sold or distributed outside the State of California, I will ask you whether any of the "Street Sale Newsboys," as I have defined that term, buy or sell or in any

(Testimony of John G. Weisbecker.)

manner handle any of those 3,743 copies of the daily issues or any of the 46,901 copies of the Sunday issues?

A. The newsboys on the Los Angeles area?

Q. I am asking you with reference to newsboys as defined in the definition which I have read into the record, and my question is: Do any of those newsboys which I have defined as "street sale newsboys" handle any of these copies—

A. No sir.

Q. (Continuing)—which are referred to in this agreed statement of facts as being sold or distributed outside the State of California?

A. No, sir, they do not.

Q. Would any change in the volume of the sales of such newsboys, as they have been defined in the record, increase or decrease the volume of the sales of the newspaper outside [1763] of the State of California? A. No, sir.

Q. Does the newspaper—and by that I mean the Los Angeles Department, Los Angeles Examiner Department of Hearst Publications, Inc.—issue or deliver any checks or pay any money to newsboys, as defined in the definition which I have read into the record? A. No, sir; they do not.

Mr. Hall: You may cross examine.

Cross Examination

Q. (By Mr. Mouritsen) Mr. Weisbecker, for what paper did you work before you came with the Los Angeles Examiner?

(Testimony of John G. Weisbecker.)

A. The Herald and Examiner.

Q. Where? A. Chicago. [1764]

Q. (By Mr. Mouritsen) Mr. Witness, what was the name of the paper that you worked for in Chicago?

A. The Herald and Examiner, and the Evening American.

Q. Evening American?

A. I worked for both papers at the same time.

Trial Examiner Kennedy: Just a minute.

What were you quoting from when you examined the witness? Statement of Facts?

Mr. Hall: Yes. It was Board's Exhibit 18, your Honor. [1766]

Trial Examiner Kennedy: It is not important, except for the question that I have in mind. I notice in Board's Exhibit 18, which is the agreed Statement of Facts referred to by counsel for the Los Angeles Examiner, the statement in Paragraph 3 thereof that the Los Angeles Examiner has a combined daily and Sunday average circulation of 263,848 copies, only 9,909 copies of which are sold or distributed outside the State of California.

Now, Mr. Witness——

Trial Examiner Kennedy: This is Paragraph 3 on page 6.

"It," referring to the Los Angeles Examiner, "has a combined daily and Sunday average circulation of 263,848 copies, only 9,909 copies of which are sold or distributed outside of the State of Cali-

(Testimony of John G. Weisbecker.)

fornia, the balance being sold [1767] and distributed wholly within the State of California."

Now, with that in mind, Mr. Witness, subtracting the 9,909 copies from the 263,848, the remainder being something over 250,000 copies, do you know how many of those copies are sold by street newspaper vendors?

The Witness: No, I would not know that.

Q. (By Trial Examiner Kennedy) Have you ever made a study or any investigation of the organization?

A. I have at different times, but right off-hand I wouldn't—because the circulation fluctuates so, and the way we define ourselves to the Auditing Bureau of Circulation, it takes in news stands and hustlers as well, and wholesale delivery as well. In other words, we file under a metropolitan basis as to one figure.

Q. Do you have any idea as to what, roughly, is the relationship?

A. No, sir, but I can possibly break that down to an approximate figure. It would take me a little time to do it.

Q. Would you say that half of your distribution is by street vendors, by newsboys such as we are discussing in this case?

Mr. Hall: Pardon me.

Is your Honor limiting his questions to newsboys as defined in this definition which has been made a bill of particulars?

(Testimony of John G. Weisbecker.)

Trial Examiner Kennedy: I am speaking of all street [1768] vendors, outside of the news stands. I think you have used the term "news stands," whether or not they are in the community as contended for.

The Witness: No. Right off-hand, I could not be positive without checking the figures. I would say——

Q. (By Trial Examiner Kennedy, Interrupting): I am not asking you to be positive. I want a rough estimate.

A. I would say that our home delivery and our news stand sales is possibly 80 per cent of our total.

Q. 80 per cent of the total?

A. That is it. Of the total circulation.

Q. 80 per cent?

A. That is an approximate figure, but I would have to check for that.

Q. Now, if some stoppage of sales should develop, due to a strike, for example, that would affect a major part of that 80 per cent outlet, do I understand it is your testimony that regardless of that, these 9,909 copies would go out into interstate commerce across the State line?

Mr. Cosgrove: May I suggest, the 80 per cent that this witness is talking about is the 80 per cent that is handled by carriers, that is, home deliveries, and by inside sales. [1769]

The Witness: That is correct.

Trial Examiner Kennedy: Is that correct?

(Testimony of John G. Weisbecker.)

The Witness: Yes.

Mr. Hall: That is what confused me on your Honor's last question.

Trial Examiner Kennedy: Yes.

Mr. Cosgrove: I thought it was apparent from the questions and answers that he had not made that clear.

The Witness: That is an approximate figure that I am giving you.

Trial Examiner Kennedy: Of that 80 per cent, what is your estimate of the percentage of sales made by street vendors, commonly known as newsboys?

The Witness: Well, the——

Mr. Hall (Interrupting): Is your Honor limiting it to within the City of Los Angeles?

Trial Examiner Kennedy: I am talking about the whole picture, as far as the paper is concerned.

Mr. Hall: Yes, sir.

The Witness: I would say the balance is 20 per cent.

Trial Examiner Kennedy: 20 per cent of the total?

The Witness: Of the total.

Trial Examiner Kennedy: And if that 20 per cent should be stopped, what effect would it have on those 9,909 copies that go across the State line? [1770]

The Witness: It wouldn't have any effect.

Trial Examiner Kennedy: It wouldn't have any effect.

(Testimony of John G. Weisbecker.)

Mr. Hall: Would that percentage be less than 20 per cent if you considered only newsboys engaged in sales within the City of Los Angeles?

The Witness: Yes, sir, it would.

Mr. Hall: Would it be considerably less than 20 per cent?

The Witness: It would be considerably less—yes, it would.

Mr. Hall: And if you restricted the definition of newsboys still further, and adopted the kind of definition which I put to you upon direct examination, would that still further limit the percentage below 20 per cent?

The Witness: Yes, it would.

Recross Examination

Q. (By Mr. Mouritsen) Mr. Weisbecker, there is something that is not entirely clear to me in Board's 18; that is, according to its last Audit Bureau of Circulation figures that the paper has a certain circulation. What are the last Audit Bureau of Circulation figures? What period do [177] they cover?

A. Well, your last figures I do not think have been received yet. That is March 31, 1940. It is for the period ending March 31, 1940.

Q. This is for the period preceding that; is that correct?

A. That I would have to look at the last Audit Bureau of Circulation report to determine. I think it is, but I am not positive.

(Testimony of John G. Weisbecker.)

Q. This is not for the period ending March 31, 1940?

A. Well, now, that I could not say. It looks somewhat like it. It looks something like the report that we file. Whether it is the exact figure there I do not know, without checking the auditing bureau.

Q. Well, as I understand you, the figures for the period ending March 31, 1940 have not been released by the Auditing Bureau of Circulation as far as the Examiner is concerned?

A. That is correct.

Q. Then they would not be the Audit Bureau of Circulation figures, would they?

A. That may be possible. We submit them to them and ordinarily they use those figures.

Q. Isn't it a fact that when you use the expression "Audit Bureau of Circulation figures," those are figures that have been released by the Audit Bureau of Circulation after you have submitted your publisher's report to them? [1772]

A. Well, we submit our publisher's report, and that is published in the paper. We can only assume that that is correct after they make their audit.

Q. Well, what are Audit Bureau of Circulation figures? Are those figures that you are authorized to release by the Audit Bureau of Circulation?

A. That is correct.

ARTHUR J. HAMPSON

recalled to the stand as a witness by and on behalf of the Respondent, the Los Angeles Examiner, having been previously duly sworn, was examined and testified as follows:

Q. (By Mr. Hall) You are the Arthur Hampson who was sworn and testified on June 22, 1940, at this hearing? [1773]. A. I am.

Q. I am going to read you a paragraph from your previous testimony given in this hearing on June 22, 1940:

"Q. Can you elaborate more on just what you do in that capacity?

"Mr. Hall: I think what he wants, Mr. Hampson, is for you to state the course of your duties, say, on a given day from the time you go to work until you get back or cease work. Is that right, Mr. Mouritsen?

"Mr. Mouritsen: That is entirely correct, Mr. Hall. Thank you.

"The Witness: Well, I have to get the amount of papers that each man desires, turn it over as a press order, see that all men are there on time ready to go out with the papers, keep in touch with the editorial department for any news—any change in the news—inform the boys what it is; certain reports and things to make out to be turned in upstairs; and see they are checked in before they go home."

Now, who are the men and boys that you were referring to in giving that answer?

(Testimony of Arthur J. Hampson.)

A. P. M. street men.

Q. Those are sometimes spoken of as night district men; is that correct? A. That is correct.

Q. Now, you were not referring to hustlers in giving that [1774] answer, were you?

A. No, sir, not at all.

Q. I am going to read into the record a definition of newsboys that for convenience I will refer to as "Street Sale Newsboys." The definition is as follows:

"All newsboys engaged in the street sale of the Los Angeles Examiner at established spots four or more hours per day, five or more days per week, within the City of Los Angeles, California, except temporary newsboys.

"An established spot is a place where a newsboy has engaged in the street sale of the Los Angeles Examiner five or more days a week for a period of six consecutive months or more.

"A temporary newsboy is a newsboy who has been engaged in the street sale of the Los Angeles Examiner at an established spot for 30 days or less."

That is the end of the definition.

Now, my question to you, Mr. Hampson, is this: Approximately how many newsboys of the type and description included within that definition handle the daily Los Angeles Examiner under or within the territory covered by these night district managers within the City of Los Angeles?

(Testimony of Arthur J. Hampson.)

A. How many, did you say?

Q. Yes.

A. I would say approximately five hundred. [1775]

Q. Are any instructions given to the newsboys selling the Los Angeles Examiner in the territory covered by these night district managers to the effect that the newsboys shall not sell other newspapers? A. No, sir, there is none.

Q. Are any instructions given to those newsboys to the effect that they shall not handle magazines?

A. No, sir.

Q. Is it a fact that those newsboys are compensated by the difference between the price that they pay for the newspapers, namely, two cents per copy for the daily edition and the price at which they sell the newspapers? Is that correct?

A. Yes, they are.

Q. And is the same thing true with respect to the Sunday newspapers? A. It is.

Q. Are any of the newsboys told that they must travel from what is called "the alley" at the Los Angeles Examiner Building out to the locations where they engage in the sale of newspapers?

A. They are not.

Q. In other words, that transportation is provided for them—is given to them if they request it?

A. Yes, sir. [1776]

Q. I think perhaps you have already testified to this, but I will ask it again.

(Testimony of Arthur J. Hampson.)

Is it a fact that the newspapers and editions which are sold by these newsboys are the Peach edition, the CC edition and the CCC edition, with sometimes a replate edition in between two of those others editions? A. That is correct.

Q. Are the newsboys that sell the Los Angeles Examiner in the territory covered by these night district men told that they must use change aprons?

A. They are not.

Q. Well, is it a fact that aprons are given to those newsboys only in cases where they request aprons? A. That is all. [1777]

Q. (By Mr. Hall) Do you know, as a matter of fact, what the practice is with respect to instructions to these newsboys concerning the period or hours that they must be on any spot?

A. There is no instructions given to the newsboys about any time to be on the spot.

Mr. Mouritsen: I object to that and move to strike the answer as not responsive.

Trial Examiner Kennedy: Let it go out.

Q. (By Mr. Hall) How long have you been manager, how long [1778] have you been in charge of these night district managers, Mr. Hampson?

A. Two years.

Q. And during that two-year period, have you had occasion to travel over the territory covered by those night district managers? A. I have.

Q. And have you done that frequently?

A. I have.

(Testimony of Arthur J. Hampson.)

Q. And have you during those trips over the territory inspected what went on in the territory with respect to newsboy activities?

A. I have.

Q. And the conduct of newsboys in general?

A. I have.

Q. You have.

Are you familiar by reason of your position with the Los Angeles Examiner with the instructions given to night district managers? A. I am.

Q. As a matter of fact, you give those instructions, don't you? A. I do.

Q. If they are given? A. I do. [1779]

Q. And spend, yourself, personally, a good deal of time there in this territory covered by the night district managers, do you not?

A. I do.

Trial Examiner Kennedy: Now, do I understand, Mr. Witness, that you give any such instructions if they are given?

The Witness: If they are given, yes, sir.

Trial Examiner Kennedy: Does any other employee of the Company have authority to give such instructions?

The Witness: To the men that work under me, you are referring to?

Trial Examiner Kennedy: Well, I am referring to the question of counsel, the instructions given to men on the spots—is that it—as to hours?

Mr. Hall: Yes.

(Testimony of Arthur J. Hampson.)

Trial Examiner Kennedy: If any?

Now, is there anyone else in authority in the Company who has the authority to give such instructions besides you? [1780]

The Witness: There is nobody with authority to give any instructions to the newsboys.

Trial Examiner Kennedy: You are the only one?

The Witness: The instructions are given by me to the district men.

Trial Examiner Kennedy: To the district men?

The Witness: Yes.

Trial Examiner Kennedy: Do the district men get instructions from anyone besides you?

The Witness: No.

Trial Examiner Kennedy: Do you ever give written instructions to the district men?

The Witness: No, I have not. It is all verbal.

Trial Examiner Kennedy: It is always oral.

All right; you may answer the question. [1781]

The Witness: In the period that I have been in charge of the night men, I have never given them an instruction in regards to time that a newsboy must be on the corner.

Q. (By Mr. Hall) I call your attention to another question and answer that appears in the testimony which you gave on June 22, 1940:

"Q. Now, at what price do you furnish newspapers to these night district men?

"A. The night district man has a set figure, a certain price of 3 cents. Anything over that is a cent and a half."

(Testimony of Arthur J. Hampson.)

Now, Mr. Hampson, that answer is not quite intelligible to me, although I think I know what you mean by the answer, and I will ask you if this is not the fact: That so far as these night district men are concerned, each has a quota of papers, and that for papers within that quota, daily issues, the night district man is charged by the Examiner—the [1782] night district man sells those papers to the newsboy at 3 cents? A. That is correct.

Q. There is a certain addition over that quota, is there not? A. There is.

Q. Which sells at a cent and a half; is that correct? A. That is correct.

Q. In the course of the testimony by Mr. Darrell Cole at this hearing, on June 24, 1940, Mr. Cole stated, as I recall, that after making certain observations in the territory covered by these night district men he made reports to you. Is that correct?

A. That is correct.

Q. What did you do after you received those reports?

A. I was mainly interested in locations for new outlets.

Q. Well, do I understand by that, that if the report showed that there was a new location at which there ought to be a news vendor, you would try to arrange that somebody took that over? Is that it? A. That is correct.

Q. As a result of any of those reports received

(Testimony of Arthur J. Hampson.)

from Darrell Cole, did you ever talk to any of the newsboys or attempt to discipline any of the newsboys? A. No, sir. [1783]

Q. As a result of any of those reports by Darrell Cole, do you, to your knowledge, know of any instance where a night district man has talked to or remonstrated with or attempted to discipline any newsboy? A. No, sir.

Q. (By Mr. Hall) Are the night district men instructed by you not to pay money to the newsboys or hustlers?

A. Yes, sir. They have a strict instruction on that.

Q. With reference to these Legion caps which have been mentioned in the testimony and which were handed out at the time of the Legion Convention in September, 1938, is it or is it not a fact that those caps were given not only to the newsboys, but to members of the public who asked for them? [1784]

A. That is correct.

Q. Were any of the newsboys, to your knowledge, told that they must wear those caps?

A. Not to my knowledge; no, sir.

Q. As a matter of fact, are the newsboys ever told they must wear any kind of article of apparel?

A. Not to my knowledge; no, sir.

Q. As a matter of fact, don't the newsboys upon occasion wear caps and other articles of apparel

(Testimony of Arthur J. Hampson.)

which advertise the products of some other producer other than Los Angeles Examiner?

A. They have; yes, sir.

Q. Would an instance of that be caps advertising Sherwin Williams paints?

A. That is correct.

Q. Well, is it fair to say that, so far as you and the night district managers are concerned, the newsboys can wear anything they please, so long as they are decently clothed?

A. That is correct.

Mr. Hall: You may take the witness.

Cross Examination

Q. (By Mr. Mouritsen) Mr. Hampson, what is the basis of your statement that there are approximately 500 newsboys in the area of Los Angeles, City of Los Angeles, who work for the night men? [1785]

A. I have worked for the Examiner for approximately 15 years. I believe I have worked every district and I have got a knowledge of the locations of each and every district.

Q. Well, you believe you have worked every district. Is that a fact, or is it not a fact?

A. Within the city, yes.

Q. Within the city? A. Yes, sir.

Q. When you say there are 500 newsboys, what newsboys do you include within that classification? All the newsboys who have any contact with the night district men?

(Testimony of Arthur J. Hampson.)

A. No. I took it from the definition Mr. Hall read to me; those that are working better than four hours a day and five days a week.

Q. Has it been your experience that there are newsboys that work less, who work only a couple of hours on an evening? Are there any newsboys of that classification?

A. Not on the daily, that I know of.

Q. That is, for the night men?

A. Yes, sir.

Q. Has it been your experience that there are any places where Examiner newsboys handle the issue for only one or two nights a week?

A. Oh, yes; there is plenty of them. [1786]

Redirect Examination

Q. (By Mr. Hall) Now, in this figure of 500 that you mentioned, as I understand it you included only newsboys that are described and are within the definition which I read into the record; is that right? A. That is correct.

Recross Examination

Q. (By Mr. Mouritsen) Do you recall now what that definition was?

A. It was a newsboy that worked better than four hours a day on five days a week.

Trial Examiner Kennedy: You are excused—just a minute.

(Testimony of Arthur J. Hampson.)

Redirect Examination

Q. (By Mr. Hall) Did you include in that figure of 500 any newsboys outside the City of Los Angeles? A. No, sir; I did not.

Q. And did you include in that figure of 500 any newsboys located at spots which were not established spots as defined in the definition?

A. No, sir, I did not.

Q. And did you include in that number of 500 any temporary newsboys as "temporary newsboy" is defined in the definition, [1788] namely, a newsboy who has been engaged in the street sale at an established spot for less than 30 days?

A. No, I did not.

Recross Examination

Q. In what period of time does your estimate that there are 500 such newsboys cover?

A. I said with the experience that I have had in the 15 years, and the knowledge that I have gained in that 15 years, and particularly in the last two years, it gives me that that is the figure that I figure we have.

Q. Now, Mr. Hampson, to your knowledge hasn't the population of Los Angeles doubled in the last 15 years? A. Why, yes, it has.

Q. And your estimate is based upon knowledge that you have gained in 15 years on this? [1789]

A. I have worked continually for the Examiner for 15 years; and I think in that period of time, working in the different districts, that I ought to have a pretty fair idea.

(Testimony of Arthur J. Hampson.)

Q. Well, those districts have changed considerably in that period, have they not?

A. No, they haven't changed. We have put on extra districts in the past 15 years, yes.

Q. But I mean, the number of spots within a given district, in most cases, has increased in the last 15 years, hasn't it? A. Why, surely.

Q. And at any given period, could you—do you have any idea how many spots there are at the present time that have not been established for six months?

A. Well, I will make a guess. I don't think you will find 25 spots in this city that haven't been established for six months.

Q. That is only a guess; is that correct?

A. That is correct.

Q. Do you have any idea how many spots there are in the city, established spots there are in the city—you understand "established spots"?

A. Yes.

Q. ——how many spots there are in the city where the newsboys have been on those spots for less than 30 days?

A. I don't know of any new spots opened up in 30 days. [1790]

Redirect Examination

Q. (By Mr. Hall) When you were talking about this figure of 500 you were referring to the number of newsboys at the present time, weren't you? A. Yes, sir, I am. [1791]

Mr. Cosgrove: Before you take the recess, Mr. Examiner, may we have a stipulation, Mr. Mouritsen, that the testimony given today by the witness, John G. Weisbecker and the witness Arthur J. Hampson has no relation to the Los Angeles Times?

Mr. Mouritsen: That may be so stipulated. [1792]

ROY ELEY

recalled to the stand by and on behalf of the National Labor [1794] Relations Board in rebuttal, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Were you elected to any committees of the Newsboys Union recently?

A. I was.

Q. And to what committee?

A. The Labor Board Committee.

Q. Do you hold any position on that Committee?

A. I am the Chairman of that Committee.

Q. About when were you elected into that Committee?

A. The first Sunday in May, at a rank and file meeting.

Q. You are acquainted with the classes of newsboys whom the Union claims are within the appropriate unit? A. I am.

Q. In your capacity as chairman of this Committee, did you make any investigation to ascertain

(Testimony of Roy Eley.)

the number of men within the appropriate unit claimed, so far as the Los Angeles Examiner is concerned? A. I did.

Q. Will you state what investigation you made?

A. I personally visited every corner in the City of Los Angeles.

Q. Talk with the newsboys?

A. Stopped and talked to the newsboys wherever it was neces- [1795] sary, and absolutely determined how many newsboys were working on that corner and what papers they were selling. That is at night, I mean, and morning.

Q. During what period did you do that?

A. Well, starting as soon as we had organized, after the first Sunday in May and from then on up until—well, I got my last check about ten days ago, I believe.

Q. On the basis of that investigation, can you state how many newsboys there are within the City of Los Anegles——

A. (Interrupting) Yes, sir.

Q. (Continuing) ——within the appropriate unit claimed by the Union? A. Yes, sir.

Q. And how many are there? [1796]

The Witness: Three hundred thirty-nine.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Hall) This investigation that you have referred to you concluded, I think, ten days ago? A. The final, yes.

(Testimony of Roy Eley.)

Q. And it started the 1st of May?

A. Approximately.

Q. How many hours did you work a day pursuing this investigation?

A. That depended on circumstances. Sometimes I have worked as many as four hours, five hours, six hours. Of course, you had to be out there at the time those boys were on the corner. And it was not a day; it was a night, but I was [1798] provided with an automobile, and I drove to these different corners night after night.

Q. Did you keep any written records as you pursued this investigation? A. I did.

Q. (By Mr. Hall) Did you include in this figure 339 night hustlers who carried both the Los Angeles Times and the Los Angeles Examiner? [1799]

A. I did where they were serviced by the district men of the two respective papers.

Q. How did you ascertain in a given case the fact, if it was a fact, that a given man was serviced by the district man of the two papers?

A. When I came to a corner where there was only one newsboy I stopped and went over and contacted that newsboy, and if I found that he was selling more than one paper I asked him how he got it, because there is instances where a newsboy might be selling both the papers; one as a newsboy of the Examiner and the other as a laydown of the Times. Those were included simply as an Examiner.

Q. Did you include in this figure 339 the news-

(Testimony of Roy Eley.)

boys that were selling the Los Angeles Examiner, the Los Angeles Times and the News? A. I did.

Q. Did you include in this figure 339 newsboys that were selling the Los Angeles Examiner and the Los Angeles News?

A. I could find no such instances.

Q. Did you discuss with these newsboys that you talked to the duration of time during which they had been selling newspapers?

A. During which they had been selling the newspaper?

Q. Yes. A. Not necessarily. [1800]

Q. You did not consult them about that?

A. Not necessarily; no. You mean as to how long they had been selling?

A. Yes.

A. Not necessarily.

Mr. Hall: I renew my objection, if the Examiner please, to the witness' testimony giving the number of newsboys, and move to strike the answer of the witness in which he stated or gave the figure 339, upon the further showing now developed by cross examination that the number of newsboys was based upon hearsay declarations of these newsboys, and I again assign any denial of my motion to strike as a violation of due process of law under the Fifth Amendment of the Constitution of the United States.

To particularize on that, we have here a conclusion now avowedly based upon ex parte out of the court

(Testimony of Roy Eley.)

room declarations made by people that we have had no opportunity to cross examine; based largely upon that, as the cross examination now discloses.

Trial Examiner Kennedy: Of course there is nothing to stop you from calling those people and examining them, if you think that is important. Mr. Witness, do I understand that you have arrived at the figure 339 as the number of people who are included within the definition of appropriate unit contended for by the Union in the Los Angeles Examiner [1801] case?

The Witness: I do.

Trial Examiner Kennedy: All right.

Now, you understand that the definition of appropriate unit includes certain newsboys at established spots who have worked four or more hours per day, five or more days per week, within the City of Los Angeles.

How did you ascertain whether or not these 339 were on established spots?

The Witness: The customary procedure in that respect—of course, in the most cases I was certain that they were established spots, being well acquainted with those spots, but if I found it was a spot that I did not know, I made it a point to ask the boy how long he had been selling papers on that corner.

For instance, I would know if Main Street is an established spot. I would not deem it necessary to ask anybody down there that question. But when I got out, say, on Florence and Vermont, when I went out

(Testimony of Roy Eley.)

there I would ask them if it really was an established spot.

Trial Examiner Kennedy: How many different inquires did you make on the question of whether or not the spot was an established spot?

The Witness: Well, I said wherever I was in doubt as to whether it was or not. [1802]

Q. (By Trial Examiner Kennedy) Do you know how many times you made that inquiry?

A. Well, I couldn't say. I might just estimate maybe fifteen.

Q. Fifteen times.

Now, temporary newsboys are excluded. How did you ascertain whether or not a newsboy was a temporary newsboy?

A. Well, now, we might be a little bit at odds there on that definition. A temporary newsboy, I mean in a temporary spot, is excluded because——

Q. As I read the statement given by the Board's attorney, it says "except temporary newsboys," excepting them from the definition of unit.

A. Well, the temporary newsboy as I define it in that case would be the boy who was out on Saturday nights, and I did not work on Saturday night, and for that reason—I made no check on Saturday nights for that reason in the majority of instances.

Q. A further definition of temporary newsboy is "a newsboy who is engaged in the sale of the Los Angeles Examiner at an established spot for 30 days or less."

(Testimony of Roy Eley.)

Now, how did you exclude the temporaries?

A. Well, if I might state, I made no attempt to exclude what you possibly are defining as a temporary newsboy.

Q. Well, I am not defining it. I am taking a statement of [1803] the Board's attorney, who is speaking for the Union.

A. You mean, then, did I, in case I came to a spot, an established spot, and saw a newsboy selling papers there, did I ask him whether he had been there 30 days or not?

Q. Yes.

A. If you did, I would have to say I did not.

Trial Examiner Kennedy: Well, on that showing, I will grant the motion to strike.

Mr. Mouritsen: And would the same motion be granted with reference to the Times, if I queried the witness regarding the practice of the Times?

Mr. Cosgrove: Just a minute.

Trial Examiner Kennedy: I do not know. If the same motion were made, if the same testimony were given, I suppose the ruling would be the same.

Mr. Cosgrove: I would like to hear the statement of counsel read.

(The record referred to was read by the reporter, as set forth above.)

Mr. Cosgrove: I did not get the word "if." I did not get the word "if." I understand it.

Q. (By Mr. Mouritsen) Well, Mr. Eley, in your capacity——

(Testimony of Roy Eley.)

Mr. Cosgrove: If you wish to cut the necessity and save time, economize on time, if the same questions were asked this witness as have been asked heretofore, with the change [1804] only that the words "Los Angeles Times" would be substituted for "Los Angeles Examiner," I would make the same motion.

Mr. Mouritsen: It is just the number we would have to change?

Mr. Cosgrove: Yes. I would make the same motion and would agree that for the number "339" the witness would testify to the number——

The Witness (Interrupting): I will have to refer to my lists to know exactly. I can't remember all of those numbers.

Q. (By Mr. Mouritsen) Well, refer to your list. What is the number on the Times?

A. On the Times it is 292.

Mr. Cosgrove: 292?

The Witness: 292, yes.

Mr. Cosgrove: I will so stipulate with you, Mr. Mouritsen.

Mr. Mouritsen: Thank you, Mr. Cosgrove. I accept the stipulation.

Trial Examiner Kennedy: If that were the case, I would rule that the witness has not testified as to a number because he has not made the exclusions that the definition of "unit" requires, and would therefore not permit that number to go in the record.

[1805]

Mr. Mouritsen: Mr. Cosgrove requested, Mr. Ex-

(Testimony of Roy Eley.)

aminer, that these Exhibits which have been put in evidence as Examiner's 3, 4 and 5, about which I believe you indicated Mr. Cosgrove should, or asked him to supply them, he desired that they might be by stipulation made to apply to the Times' case, and I suppose, the Herald and Express.

Mr. Compton: We understand that instead of supplying the same thing it will be supplied in one case and apply in all cases?

Mr. Mouritsen: Yes, and I would be willing to agree that is the case in order to save putting in twelve such Exhibits rather than three.

Trial Examiner Kennedy: Are you offering a stipulation?

Mr. Mouritsen: Yes. I would offer to so stipulate.

Mr. Cosgrove: We would like to embrace the stipulation, Mr. Examiner.

Mr. Howard Binford: The Stockholders Publishing Company will embrace the stipulation.

Mr. Compton: It is accepted on behalf of the Los Angeles Evening Herald and Express. [1808]

Wednesday, June 26, 1940 [1811]

ARTHUR FLOYD NATION

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified in rebuttal as follows:

(Testimony of Arthur Floyd Nation.)

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Nation?

A. 326½ South Main, at the Elko Hotel.

Q. Do you handle Los Angeles Examiners?

A. Not at the present. I handle the Times now. But I have handled the Examiner under Abe Pierce about six weeks ago.

Q. I see. For how long a period of time?

A. Four months and a half.

Q. At what place?

A. Fourth and Main.

Q. And while you handled the Examiners at that place, who was the Examiner district man?

A. Abe Pierce. All but two weeks of that time. There was another district man that took his place during his vacation. [1813]

Q. While you were on that spot, during what hours did you work?

A. Ordinarily from about a quarter of 7:00 or 7:00 o'clock until about quarter of 1:00.

Q. And during the period while you were on that corner, where did you receive the copies of the first issues which you handled?

A. At Fifth and Main.

Q. And from whom did you receive them at that time?

A. From the main spot man at Fifth and Main.

Q. On any occasion during the period while you were on the Fourth and Main spot, did Abe

(Testimony of Arthur Floyd Nation.)

Pierce count out the first edition of the Peach to you?

A. No, sir. Except on Saturday. Of course these Sunday papers came through on a truck. He throws them off at the corner on Saturday. Other days, however, they are carried from Fifth and Main.

Q. Who carried them from Fifth and Main to you? A. I did.

Q. During the period while you were on that corner on Fourth and Main did you ever receive any maps? A. Yes, sir.

Q. Did you ever receive any maps from Abe Pierce?

A. Well, he threw them off the truck.

Q. And did you receive, though, such maps on more than one [1814] occasion?

A. Well, approximately three or four—about three times.

Q. On any occasion when Abe Pierce threw off a map similar to Board's Exhibit No. 21 for identification, did he ever have a conversation with you regarding that map?

A. Nothing more than he said to put it up where it can be seen, only in a much more stern voice than I put it.

Q. And on any occasion when he had maps did he himself personally ever put those maps up any place on your corner?

A. Absolutely not, no, sir.

Mr. Mouritsen: I will offer Board's Exhibit No. 21 for identification in evidence. [1815]

(Testimony of Arthur Floyd Nation.)

Mr. Hall: I have no objection to the offer, but I would like it to appear in connection with the offer of Board's Exhibit No. 21 that the object being offered is a map of a portion of Europe and Africa, apparently cut from a newspaper and pasted on a large sheet of cardboard. You have no objection to that statement, Mr. Mouritsen?

Mr. Mouritsen: No.

Mr. Hall: That is accurate, isn't it?

Mr. Mouritsen: That is accurate. And also I would like the record to show *the record to show* the exhibit bears the words "Map Copyrighted 1940 by Los Angeles Examiner."

Mr. Hall: So stipulated.

Trial Examiner Kennedy: It may be received in evidence. [1816]

Q. (By Mr. Mouritsen) And during the period, Mr. Nation, while you were on the Fourth and Main spot where did you check in?

A. Fifth and Main, Belmont Grill.

Q. And why did you check in at that spot rather than on Fourth and Main? [1817]

The Witness: Well, that was our orders from Pierce.

Q. (By Mr. Mouritsen) Do you recall when Pierce—or, when you first had any conversation with Pierce regarding the place where you were to check in?

(Testimony of Arthur Floyd Nation.)

A. Well, not any lengthy conversation, no. He just said, "We check in at the Belmont Grill."

Q. Well, did he tell you that at or about the time you started to operate on Fourth and Main?

A. Yes.

Q. You left that spot about six weeks ago?

A. Yes, sir; approximately that length.

Q. You were there about four and one-half months? A. Yes.

Q. Where did you have that conversation with him regarding the place you were to check in? [1818]

A. In at the Examiner alley, when he told me to go to Fifth and Main to meet him on the papers. I asked him then where I was to check in.

The Witness: He told me to check in at Fifth and Main. [1819]

Q. During the period while you were on the spot at Fourth and Main at what time did you start to operate on Saturdays?

A. At anywhere from quarter of 3:00 until 3:00 o'clock.

Q. As a general rule, during the first three or four hours that you operated on Saturdays approximately how many papers would you sell?

A. Approximately 15 until the second edition come out at 6:00 o'clock. I say "approximately" because that should vary from 10 to 15.

Q. Now, during the period while you were operating, will you please describe the procedure that

(Testimony of Arthur Floyd Nation.)

generally took place when you received these first copies of the Peach edition at Fifth and Main; just tell us what happened during that time.

A. Well, at around 6:30 he generally came along there, 6:30 to a quarter of 7:00.

Q. Who?

A. Mr. Pierce. He would blow his horn and turn around the [1820] corner and the man operating at Fifth and Main would take the papers out of the car * * *

Q. From whom?

A. From Abe Pierce to the man operating at Fifth and * * *

The Witness: And then each one of us, in rotation, from First and Main to Fourth would receive our papers, ranging from 15 to 30 papers; and we would carry our paper from Fifth and Main to our beats, each one of our own corners.

Q. (By Mr. Mouritsen) During that period, Mr. Nation, did [1821] you always receive the same number of copies of the Peach edition?

A. Most always, except on Sunday.

Q. Well, did that number vary from time to time? A. Yes.

Q. And did you have anything to do with fixing that number of papers that you received?

A. No, sir.

Q. And when any changes occurred in it did you have anything to do with the changing of the number of papers that you received?

A. No, sir.

(Testimony of Arthur Floyd Nation.)

Q. (By Mr. Mouritsen) Of the later editions of the paper that you received did you fix the number of those——

A. (Interrupting) No, sir.

Q. (Continuing) ——copies that you received?

A. No, sir.

Q. Who fixed those, if you know?

A. Mr. Pierce.

Q. During the period that you operated on Fourth and Main, Mr. Nation, did Mr. Pierce ever count out to you personally the copies of the first edition of the Peaches that you received? [1822]

A. No, sir.

Q. Are you a member of the Newsboys Union?

A. Not at present.

Q. You are here under subpoena, Mr. Nation; is that correct? A. Yes, sir.

Mr. Mouritsen: You may inquire.

The Witness: Sir.

Cross Examination

Q. (By Mr. Hall) These maps which Mr. Pierce gave you at your corner were all mounted on stiff cardboard before they were turned over to you, weren't they? A. Yes, sir.

Q. The maps which were pasted on cardboard were maps which were printed in the newspaper itself, weren't they? A. Yes, sir.

Q. But in the newspaper itself those maps did not appear on the front page, did they?

A. No, sir.

(Testimony of Arthur Floyd Nation.)

Q. What was the period you were selling Examiners at Fourth and Main streets?

A. Well, I started there just a little before Christmas.

Q. Last Christmas?

A. This last Christmas, yes. It might have been a little longer than four months and a half, but I——

Q. (Interrupting) And when did you stop selling papers? [1823]

A. About six weeks ago.

Q. During that time did you ever sell out all of the Peach edition?

A. On several occasions; yes, sir.

Q. Did Mr. Pierce refuse to give you further copies of the Peach when you did sell out?

A. Well, I won't say he refused, but he told me to go to Fifth and Main if I sold out and buy some more. He hardly ever came around when we needed him on the second pickup.

Q. How many times was it, you say, you sold out the Peach edition?

A. Well, I should say approximately 15 or 20 times.

Q. Did you ever ask Mr. Pierce to give you more papers than he gave you? A. Yes, sir.

Q. How many times?

A. Oh, two or three times.

Q. Just two or three times? A. Yes, sir.

Q. While you were selling Examiners at Fourth

(Testimony of Arthur Floyd Nation.)

and Main streets did you sell any other newspapers?

A. How is that question, may I ask you?

Q. Did you sell any other newspapers except the Examiner?

A. Oh, no; no, sir.

Q. You just sold the Examiner?

A. The Examiner; yes, sir. [1824]

Q. You are quite sure that during that whole period from Christmas down to the time you stopped selling the newspaper that the only newspaper you handled was the Los Angeles Examiner?

A. That is right.

Q. Did you sell any magazines?

A. No, sir.

Q. What is your present occupation?

A. I am working on the Times at Jefferson and Figueroa.

Mr. Cosgrove: Will it be stipulated, Mr. Mouritsen, that the testimony of the witness Arthur Lloyd Nation and Board's Exhibit No. 21 have no application to the Los Angeles Times case?

Mr. Mouritsen: It may be so stipulated.

Mr. Cosgrove: Thank you.

Mr. Compton: May the same stipulation be made with reference to the Los Angeles Evening Herald and Express?

Mr. Mouritsen: Yes. And with reference to the Stock- [1825] holders also.

Mr. Binford: And with reference to the Stockholders Publishing Company?

Mr. Mouritsen: Yes.

RAYMOND F. MARX

recalled as a witness by and on behalf of the Los Angeles Times, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Cont'd.)

Mr. Cosgrove: We will ask that the paper marked "Table showing percentage of daily out of state sales, total of average daily net paid circulation," to be marked Times Exhibit No. 7 for identification.

(Thereupon the document above referred to was marked Los Angeles Times Exhibit No. 7 for identification.)

Q. (By Mr. Cosgrove) Mr. Marx, counsel for the various parties in interest have signed what is called an agreed stipulation of facts, and it is marked Board's Exhibit No. 14, and it shows in paragraphs 3 and 4 the number of the average daily net paid circulation for the year 1939 of the Los Angeles Times to be 220,266. And do you observe that [1826] figure appearing on the exhibit No. 7 for identification? A. Yes.

Q. And of this number approximately 3,935 were sold outside the State. Do you see that figure?

A. Yes.

Q. And the percentage of the sales outside the

(Testimony of Raymond F. Marx.)

State as compared with the total net paid circulation to be 1.7, shown on the exhibit?

A. Yes, sir.

Q. And the agreed statement of facts shows that for the Sunday circulation, the net paid circulation of the Los Angeles Times was 367,814, as shown on Exhibit No. 7, and of that number 9197 were sold or distributed outside the State; that figure is also shown there? A. Yes, sir.

Q. And that the percentage of outside sales as compared with the total distribution on Sunday is 2.5 per cent? A. Yes, sir.

Q. Those figures are also shown on the exhibit?

A. Yes, sir.

Q. I will ask you if, since the execution of the agreed statement of facts, and since the hearing began, you have made an effort to determine what —I will withdraw that question. I will ask you if since the hearing began you have made an effort to figure out the number of the daily and the [1827] number of the Sunday total net paid circulation that have been distributed through street sales.

A. Yes, sir.

Q. And in that connection I will ask you if you used the same districts and the same hustlers that were shown in the schedule which was received as Times Exhibit No. 6. A. Yes, sir.

Q. The record discloses that those hustlers shown on Times Exhibit No. 6 are all of the hustlers that deal with district men, but it also shows

(Testimony of Raymond F. Marx.)

that these hustlers sell in unincorporated areas outside the city of Los Angeles, and the City of Glendale; do you remember that fact?

A. That is right.

Q. I will ask you if you determined the number of street sales by all of these hustlers that are shown on the Times Exhibit 6, that is, all street sales through all hustlers dealing with all district men. A. No, sir.

Mr. Cosgrove: Let me have that question read again, please.

(The question referred to was read by the Reporter as set forth above.)

Q. Do you understand the question?

A. Well, this was taken from our records when this record was made, if that is what you mean. [1828]

Q. Yes. A. Yes, sir.

Q. Let me ask the question again. Have you at my suggestion attempted to determine the total number of Los Angeles Times that are distributed by what we call street sales?

A. Yes, sir.

Q. And what is that figure? A. 13,958.

Mr. Mouritsen: That is per day, for the daily?

Q. (By Mr. Cosgrove) For the daily?

A. For the daily.

Q. For the Sunday what is it?

A. 31,720.

Q. Now let us take the daily distribution. That

(Testimony of Raymond F. Marx.)

distribution is made through all of the dealers, both inside the city of Los Angeles and outside of the city of Los Angeles, is it?

A. That is right.

Q. And it includes more outside territory than Glendale? A. That is right.

Q. It includes such other places as what?

A. Oh, Alhambra, South Pasadena, Burbank.

Q. Beverly Hills? A. Beverly Hills.

Q. Southgate. [1829] A. Southgate.

Q. Huntington Park? A. That is right.

Q. Now, did you try and ascertain exactly how many of the 13,958 were distributed in the cities of Glendale and Los Angeles?

A. No. That would be hard to do.

Q. Well, did you try to do it?

A. No, we didn't.

Q. Didn't you tell me this morning that you attempted to do that and couldn't do it?

A. Well, we attempted to do it, but that would be impossible to segregate just those certain areas.

Q. Well, that is what I want to bring out. You did try to do it? A. Yes, sir.

Q. And I asked you to see if you could do it?

A. That is right.

Q. And you took it up with Mr. Cohen and Mr. Nathan? A. That is right.

Q. And you could not determine; you had no information that would enable you to tell how many of the 13,958 were distributed inside the city of

(Testimony of Raymond F. Marx.)

Glendale and city of Los Angeles, and how many outside? A. That is right. [1830]

Q. Well, did you in these discussions and conferences and studies that you made arrive at a rough approximation of the percentage that is distributed inside the city of Los Angeles and the city of Glendale? A. Yes, sir.

Q. And what is that rough approximation?

A. I would estimate about 65 per cent.

Q. In the agreed statement of facts, that is, Board's Exhibit No. 4, and in paragraphs 3 and 4, is shown the out-of-state sales to be 9,197 on Sunday, and 3,935 on a week day. A. Yes, sir.

Q. In round numbers approximately 4000 on week days and 9000 on Sundays, out-of-state sales and distribution? A. Right.

Q. Do you remember that I called your attention to a what I call bill of particulars that was read into the record, by which counsel for the Board defined a newsboy as one who sold on an established spot, and also who was not a temporary boy? Do you remember my reading that to you?

A. Yes, sir.

Mr. Cosgrove: And for the purpose of the record at this time I will again read it. It is: "All newsboys engaged in the street sale of Los Angeles Times at established spots four or more hours per day, five or more days per week, within the city limits of Los Angeles and Glendale, California, [1831] except temporary newsboys.

(Testimony of Raymond F. Marx.)

"An established spot is a place where a newsboy is engaged in the street sale of the Los Angeles Times five or more days a week for a period of six consecutive months or more.

"A temporary newsboy is a newsboy who is engaged in the street sale of the Los Angeles Times at an established spot for thirty days or less."

Q. Do you remember my reading that definition to you? A. Yes, sir.

Q. And you remember our discussing it and analyzing it? A. Yes, sir.

Q. Now, in attempting to provide that definition, we will call these newsboys those defined, say, as permanent newsboys on established spots. I will ask you if all of the newspapers of the Los Angeles Times that are distributed in the cities of Los Angeles and Glendale are distributed on established spots by permanent newsboys?

A. No, sir.

Q. So there is some portion, then, of this number less than what you would approximate at 65 per cent of, let us say, 9000, some portion that is distributed by newsboys who could not qualify as permanent newsboys on established spots?

A. That is right.

Q. Did you attempt to make even a rough estimate of what [1832] that number would be?

A. Yes, we made an attempt to do it.

Q. And did you have any success at that?

A. No success.

(Testimony of Raymond F. Marx.)

Q. The agreed statement of fact—that is Board's Exhibit 14—shows, as does this Exhibit No. 7 for identification of the Times, that the out of state sales average approximately 4000 daily and approximately 9200, say, on Sundays. And I will ask you to assume that all the newsboys who distribute the Los Angeles Times in the cities of Los Angeles and Glendale, whether permanent boys on established spots or not—just take them all—assume that they would refuse or fail for some reason to distribute the Los Angeles Times on week-days or Sundays. What if any effect would that have upon distribution out of the state of the approximately 4000 daily and approximately 9200 Sundays?

A. No effect. [1833]

Q. (By Mr. Cosgrove) What if any connection do the boys whose names appear in this Exhibit No. 6 of the Times have with the sending to out of state points of the Los Angeles Times or with the out of state sales of the Los Angeles Times?

A. Nothing to do.

Q. Does the number of papers that are sent outside of the state have any relation at all, in the matter of sending them out, to the activities of the hustlers in street sales in the cities of Los Angeles and Glendale? [1835]

The Witness: It has no bearing on that. [1836]

Q. With reference to newsboys as defined in the definition which I have read into the record, in which I have just called "Permanent boys on es-

(Testimony of Raymond F. Marx.)

tablished spots," my question is: Do any of those newsboys which I have defined as "permanent boys on established spots" handle any of these copies which I referred to in the agreed statement of facts as being sold or distributed outside the State of California? A. No, sir.

Q. Would any change in the volume of sales of such newsboys, as they have been defined in the record, increase or decrease the volume of the sales of the newspaper outside of the State of California?

A. No, sir. [1837]

Q. Now, if some stoppage of sales should be developed due to a strike, for example, that would affect a major part of that 6.5 per cent do I understand it is your testimony that regardless of that these 3935 copies would go out into interstate commerce across the state line? A. Yes, sir.

Q. What is the answer? A. They would.

Q. And if this 6.3 per cent should be stopped what effect would it have on those 3935 that go across the state line? A. No effect.

Mr. Cosgrove: That is all.

Q. (By Mr. Cosgrove) Pardon me, the same situation applies to the Sunday circulation as to the daily circulation, doesn't it? A. That is right.

Mr. Cosgrove: That is all.

Trial Examiner Kennedy: Is there anything further?

Mr. Cosgrove: Oh, I will offer the tabulation which has these figures in evidence as Times' Exhibit No. 7. [1841]

Trial Examiner Kennedy: Received. Any further examination of the witness?

(Thereupon, the document above referred to was received in evidence as Los Angeles Times Exhibit No. 7.) [1843]

GROVER CLEVELAND NIXON

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, testified in rebuttal as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Nixon, where do you reside?

A. 820½ West Third Street, Hotel Andrew.

Q. You are here under subpoena?

A. Yes, sir.

Q. Are you at present handling the Los Angeles Examiner? A. Yes, sir.

Q. Where? A. First and Main.

Q. Who is your district man?

A. I only know him by the name of Abie. But, then, everybody says his name is Pierce, and that's all I know about it.

Q. How long have you been handling the Los Angeles Examiner at that spot?

A. Well, I should say close on to a year.

Q. During that time has Mr. Abie Pierce been your district man? [1844]

A. Well, yes, I might say so. But sometimes more nearly every week he is off two days and an-

(Testimony of Grover Cleveland Nixon.)

other man, substitute, takes his place. Nevertheless, he is under the manager Abie Pierce.

Q. And during what hours do you operate on that spot?

A. Well, we are supposed to start about 6:30 to quarter of 7:00, along like that, and work until 1:00 o'clock in the morning. I, myself—I am speaking of my specific case.

Q. I believe you said you were on First and Main? A. Yes.

Q. During that period, Mr. Nixon, where have you received your first copies of the Peach edition?

A. At Fifth and Main.

Q. During that period has there been any occasion on which Abe Pierce has left you the first copies of the Peach edition at First and Main?

A. No. He never has given me a solitary paper on that corner.

Q. Will you please describe the procedure when you received your copies of the first edition of the Peach? A. Fifth and Main.

Q. On Fifth and Main?

A. You speak about how they are delivered, and so forth?

Q. Yes.

A. Well, he comes out Main Street and turns east on Fifth from the south corner and the boys take the papers out of the [1845] car and stack them on the sidewalk, and there is that sheet of paper business again. He has each corner's quota of papers

(Testimony of Grover Cleveland Nixon.)

marked down, some order or other, and that is the way they are given out.

Q. And who give them out?

Mr. Hall: Just a moment. I move to strike that portion of the answer relating to a piece of paper and its contents.

The Witness: What did you say, please?

Trial Examiner Kennedy: It may go out.

Q. (By Mr. Mouritsen) Mr. Nixon, after you see this piece of paper what as a general rule happens to it?

A. Well, he reads off the—reads off the paper and if it is me I get 15 to 20, 25 to 30 papers, and the next one gets his quota when he may be called.

Q. And when you say "he" whom do you mean?

A. The man on the so-called star corner, Fifth and Main; not Abie himself—or, rather, Mr. Pierce.

Q. What does the man on the star corner—is he also known as main spot boy? A. Yes.

Q. What does he do with that paper after he reads off the list of——

A. (Interrupting) That is what I don't know—oh, yes, I do too. I had a little experience. He keeps—he reserves that paper for reference against the time of checking in, and [1846] the reason I know that is because night before last I thought I was going to help this star corner man to do his counting, and I counted my own 15 papers, because I had been getting so regularly the 15 papers, you know, and I counted myself the 15 papers and took

(Testimony of Grover Cleveland Nixon.)

them away to my corner, and I told him before I left that I had 15 papers, and he asked me distinctly how many I have, and I told him 15 again.

Q. (By Mr. Mouritsen) Well, as I understand, your testimony then is Abe Pierce comes along Fifth Street—strike that. He comes along Main and turns up Fifth and——

A. (Interrupting) Puts the papers—they take the papers out of the car themselves, the boys do.

Q. Then at that time he gives to the main spot boy a slip of paper? A. That's it.

Q. And the main spot boy reads from the slip of paper? A. Always, yes, sir. [1847]

Q. And what does he do when he reads from the slip of paper, as a general rule?

Trial Examiner Kennedy: It is the main spot boy that does the reading from a piece of paper, is that right?

The Witness: He handles the piece of paper. Ordinarily, he doesn't say out loud what he reads off the paper. Those numbers I spoke about. He just looks on the paper——

Trial Examiner Kennedy (Interrupting): Looks at it?

The Witness: Yes. Sometimes, however, he does say 20, or 15, but it is not regular.

Trial Examiner Kennedy: It is always the same boy that you are talking about that does this, the same individual?

The Witness: No. Because this young man we

(Testimony of Grover Cleveland Nixon.)

are talking about sometimes say, oh, I don't know if it is a day a week or two days a week, but one day a week anyhow, some other young man takes over for him for that particular day.

Trial Examiner Kennedy: What is the name of this individual who generally does it?

The Witness: I couldn't tell you.

Trial Examiner Kennedy: Do you know the names of any of [1848] his substitutes?

The Witness: No, sir, I do not.

Trial Examiner Kennedy: I will allow the answer to remain in the record.

Q. (By Mr. Mouritsen) And that is the procedure followed by the main spot boy who is on the corner at the present time; is that correct?

A. Yes. He just reads off of that paper.

Q. Does the main spot boy give you your papers? A. Ordinarily, yes.

Q. And then what do you do?

A. Go to First and Main, carrying the papers.

Q. Why, Mr. Nixon, do you receive your papers at Fifth and Main rather than at First and Main where you sell?

A. Well, I can't conscientiously answer that question because I don't know. That is Mr. Pierce. I don't know why he does it that way.

Q. The question is not why Mr. Pierce does it that way, but why do you receive your copies of the paper at Fifth and Main rather than at First and Main? [1849]

(Testimony of Grover Cleveland Nixon.)

The Witness: Well, I can only answer that by saying because Mr. Pierce brings them to Fifth and Main and requires us to go there after them. Is that satisfactory?

Q. (By Mr. Mouritsen) I believe you stated that the number of papers you received of that first edition of the Peaches varied from time to time; is that correct? A. Yes, sir.

Q. Do you determine the number of papers, of copies of the Examiner that you receive on the first edition of the Peach? A. I do not.

Q. Who determines that, if you know?

A. Mr. Pierce.

Q. And do you receive subsequent editions of the paper?

A. Yes, sir. When he brings them on the corner.

Q. And do you determine the number of succeeding copies of the Examiner that you receive?

A. I have positively no voice in that at all.

Q. Who determines that, if you know?

A. It is either Mr. Pierce or it is operated from the office. I couldn't tell which.

Q. During the period that you have been on that corner has Abe Pierce ever given you any maps or placards to display? [1850]

A. Just like that (indicating).

Q. And I will show you Board's Exhibit 21 and ask you if that is what you referred to when you said, "Just like that"?

(Testimony of Grover Cleveland Nixon.)

A. Yes, sir; a map just like that.

Q. On any occasion when Mr. Pierce has given you a map similar to Board's 21, has he ever posted that on your corner himself?

A. No, sir; he has not.

Q. Has anyone posted it on your corner?

A. Only myself.

Q. And on any such occasion did you ever have a conversation with Mr. Pierce regarding the posting of such placards or maps?

A. No conversation, except that he said, "Put it on the post—put it up," rather. He meant the post, on the candelabra post, lamp post.

Q. Has he given you such maps on more than one occasion?

A. Well, back in my mind I see about five occasions, on account of this war.

Q. Where do you check in, Mr. Nixon?

A. Fifth and Main, at the Belmont Grill, I believe they call it.

Q. And to whom do you check in?

A. Whoever happens to be the district man on that particular night. Ordinarily, though, it is Mr. Pierce.

Q. On any occasion during the times you have been operating [1851] on First and Main has Mr. Pierce ever checked you in at First and Main?

A. No; not on the week day string of papers; and on the Sunday papers he comes around—oh, I don't know when—sometime before midnight and makes a collection from my particular self of four

(Testimony of Grover Cleveland Nixon.)

to five dollars; so then, I make a final check-up then to Belmont Grill. In other words, finally and ultimately, I check in every night at the Belmont Grill.

Q. Why do you check in with Mr. Pierce at the Belmont Grill rather than at your spot on First and Main?

A. Well, he requires us to come over to check in.

Q. At what time do you ordinarily report for work on Saturday?

A. About a quarter of three, that is, a quarter of three in the afternoon.

Q. That is approximately three hours earlier than you do on week days?

A. Something like that; yes.

Q. During the period between 3:00 and 6:00 o'clock on Saturdays during the period that you have been on First and Main, how many copies of the Examiner on an average have you sold?

A. Well, five or six.

Q. Mr. Nixon, why do you remain on the corner between 3:00 [1852] and 6:00 on Saturdays if you sell only five or six copies of the paper during that period?

A. Well, if I didn't stay I would be summarily discharged and somebody else would stay, and he would put somebody else on there. You have to stay. In other words, it is part of the job.

Q. (By Mr. Mouritsen) During the period that you have been receiving your first copy of the Peach

(Testimony of Grover Cleveland Nixon.)

at Fifth and Main, have you ever received them from a main spot boy known as Sollie Sanchez?

A. Yes.

Q. You recall him? A. I do.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Hall) Where did you receive the newspapers from Sanchez; at First and Main or at Fifth and Main?

A. Yes, sir. First and Main.

Q. First and Main? [1853]

A. No, no; Fifth and Main.

Q. Fifth and Main?

A. The regular place.

Q. When these maps were delivered to you they were mounted on stiff cardboard, were they?

A. Just like that exactly.

Q. All of them mounted on stiff cardboard?

A. Every one.

Q. So that the maps would stand up if they were set up against the building, wouldn't they?

A. Yes; obviously they would.

Q. Did you ever complain to Mr. Pierce about not getting enough newspapers?

A. No, sir; I never have a solitary time.

Q. Are you acquainted with Mr. Roy Eley?

A. Who?

Q. Mr. Roy Eley.

A. Mr. Elling—I never heard of him.

Mr. Hall: I request Mr. Eley to stand up.

The Witness: Uh-huh.

(Testimony of Grover Cleveland Nixon.)

Q. (By Mr. Hall) You know Mr. Eley now?

A. Sure I do.

Q. Are you acquainted with Mr. Pat Comorre?

A. Unless that is he over there.

Q. He is the gentleman sitting with his bare arms right [1854] next to Mr. Mouritsen at the counsel table. A. Yes, sir.

Q. You know him, do you?

A. I know him. I didn't know his name, though.

Q. You know both these gentlemen?

A. Yes, sir.

Q. When did you first become acquainted with Mr. Roy Eley? A. Mr. Who?

Q. Mr. Eley.

A. Oh, I can't tell you, to save my life.

Q. Are you a member of the Newsboy's Union?

A. Yes.

Q. Whenever you received these newspapers from Sanchez, that was at Fifth and Main Streets, wasn't it? A. Fifth and Main.

Q. Every time he delivered them to you?

A. Every time. Oh, may I recall that question about making his acquaintance? Mr. ——

Q. Mr. Eley?

A. It was somewhere close along when he took over the secretarial end of the C. I. O., whenever that was, on the street.

Q. Does Mr. Pierce ever stop his car at First and Main Streets and get out?

A. One time, and one only that I can recall. [1855] I was talking about First and Main.

(Testimony of Grover Cleveland Nixon.)

Q. Yes.

A. Where I work.

Q. Yes. A. Once, and once only.

Q. That is right. Do you sell any magazines?

A. No, sir.

Q. Do you sell any newspaper except the Los Angeles Examiner?

A. Just the Examiner. The Examiner only.

Mr. Hall: Just the Examiner. That is all.

Trial Examiner Kennedy: Anything further?

Did you ever tell Mr. Pierce to bring your papers to you at First and Main?

The Witness: No.

Trial Examiner Kennedy: That is where you sell, First and Main, isn't it?

The Witness: I never made any such request as that.

Trial Examiner Kennedy: You don't know whether he would do it if you did make a request or not, do you?

The Witness: Well, I don't think he would because it is so much out of his way. [1856]

Redirect Examination

Q. (By Mr. Mouritsen) On the corner where you operate are there any newsboys who handle other papers? A. Yes.

Q. And what other papers do such newsboys handle?

A. Well, it is the Examiner—rather, the Times and the [1857] Herald, and that peach-colored pa-

(Testimony of Grover Cleveland Nixon.)

per, and the Daily News—the Daily News and the L'Opinion. I guess that is all. That is enough, though, at that.

Q. How many newsboys are there on the corner besides yourself?

A. Well, the Herald man handles that string of papers I have been talking about, except L'Opinion, and he checks in or checks out, rather, or, in if you want to call it "in," at about—somewhere at about 7:30, and the Times man takes it over.

Q. What do you mean he takes it over?

A. Well, he turns whatever papers he has left, turns them over to the Times man to be sold with a profit—the profit accruing from them goes to the Times man.

Mr. Mouritsen: I think that is all.

Recross Examination

Q. (By Mr. Hall) Do you take over any of the News? A. The what?

Q. Do you take over the sale of any of the News for the News man who has been on the corner during the day?

A. I don't quite understand your question. If he is absent I sell for him. That is a tacit agreement between us, that if I am absent he helps me that much while I am gone, and vice versa.

Q. And when he quits at 6:00 o'clock in the evening, or [1858] whenever it is that he does quit, do you take over any of his unsold papers and sell them?

(Testimony of Grover Cleveland Nixon.)

A. He gives me two outright, give them to me.

Q. Oh, he gives them to you?

A. To get rid of if I can.

Q. And if you do get rid of them you get the full amount you sell those two papers for?

A. Five cents apiece.

Mr. Cosgrove: May it be stipulated, Mr. Mouritsen, that the testimony of the witness Grover Cleveland Nixon has no application to the Times case?

Mr. Mouritsen: It may be so stipulated.

Mr. Howard Binford: And has no application to the Stockholders Publishing Company, the same stipulation?

Mr. Mouritsen: Yes, sir.

CARL LESLIE JOHNSON

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified in rebuttal as follows:

Mr. Compton: Just a moment, please. Will you make the [1859] same stipulation on behalf of the Los Angeles Evening Herald and Express, Mr. Mouritsen?

Mr. Mouritsen: So stipulated; also with reference to the Stockholders Publishing Company.

Mr. Binford: Thank you.

(Testimony of Carl Leslie Johnson.)

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Johnson?

A. 420 West 31st Street, Los Angeles.

Q. You are here under subpoena?

A. Yes, sir.

Q. Do you handle the Los Angeles Examiner?

A. I do.

Q. Where do you handle it?

A. Third and Main.

Q. How long have you handled it at that spot?

A. I have been on that spot about six weeks.

Q. Who is your Examiner district man?

A. I know him as Mr. Abe Pierce.

Q. And during that period where have you received the first copies of the Peach edition that you handle? A. Fifth and Main streets.

Q. On any occasion during the period that you have handled the Examiner has Mr. Pierce delivered the first copies of the [1860] Peach edition to you at Third and Main?

A. I would like to say that I handle it on an off spot. I am not the main spot guy at Third and Main, but I am the off spot man there. But I handle the Examiner, but I have to report to Fifth and Main to get the Examiner and help the main spot man to bring his papers to Third and Main. And, to my knowledge, I have never seen Mr. Pierce give the main spot man his papers, nor has he given them to me.

(Testimony of Carl Leslie Johnson.)

Q. That is, the first copies of the Peach?

A. The first copies of the Peach. I have never seen him hand them out to either one of us.

Q. From whom do you receive them at Fifth and Main?

A. The man that is termed as the main spot man on Fifth and Main gets the papers from Mr. Pierce. Mr. Pierce delivers them to him and then he counts them out to the different hustlers along the streets.

Q. Approximately how many hustlers are there on an evening who receive the first edition of the Peach at Fifth and Main from the main spot boy?

The Witness: I say there is about six.

Q. (By Mr. Mouritsen) And do they report there each evening [1861] at approximately——

A. (Interrupting) Each evening at approximately 6:00 o'clock, and wait for the papers until they get there.

Q. That is on week days?

A. On week days; yes, sir.

Q. Where do you receive the later editions of the paper?

A. Mr. Pierce drives on down to Third Street, or further down still, in his car and he hands the later editions to the main spot guy at Third and Main.

Q. And during any of the period that you have been on that spot has Mr. Pierce ever counted out to you personally the copies of the later editions which you handle?

A. He does not. He has not.

(Testimony of Carl Leslie Johnson.)

Q. During the period that you have been on this spot at Third and Main, Mr. Johnson, where have you checked in each evening?

A. I have been on the off spot there and check in to the main spot man on Third and Main, and he checks in to Mr. Pierce.

Q. Where does he check in to Mr. Pierce, if you know?

A. Fifth and Main, Belmont Grill.

Q. Mr. Johnson, why do you go to Fifth and Main to receive the first copies of the Peach edition of the Examiner that you receive, that you handle? [1862]

(The question referred to was read by the reporter as set forth above.)

The Witness: When I was first sent to Third and Main by Mr. Pierce, why, he told me to stop at Fifth and Main and he would be there with the papers, he would come there; and he didn't give me the papers then, but he told this main spot man there to give me the papers for Third and Main; and told me to go on to Third and Main, and each evening it has been the same thing there.

Q. Are you a member of the Newsboys Union, Mr. Johnson? A. Yes, sir.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Hall) The editions after the Peach edition are delivered, you said, by Mr. Pierce to the main spot man at Third and Main streets?

(Testimony of Carl Leslie Johnson.)

A. Yes, sir.

Q. And it is from that main spot man at Third and Main streets that you draw your papers after the Peach edition; is that it?

A. Yes, sir.

Q. Do you sell the Herald and Express?

A. Well, if the main spot Herald man, when he goes off in the evening, leaves any there the Examiner man takes them off of him and sells them during the night if anybody wants them; and if I go over there and ask him for a Herald, I go [1863] over there and carry it to my spot.

Q. Do you sell any papers besides the Herald and Express? A. Herald and News.

Q. The News?

A. Yes, sir. If he leaves some News there for him, and there is a Times boy over there on the main spot.

Q. Do you handle newspapers for the main spot Times boy?

A. And I handle some papers for him, just carry them over there. If anybody asks for the Times, why, I am glad I got it over there and I sell that to him.

Q. How much do you make on those Times that you sell? A. I make the regular profit.

Q. The regular profit. And how much is that on the daily Times? A. 2 cents.

Q. Do you make a profit on the other newspapers you sell? I mean by that, the Herald and the News? A. Yes, sir.

(Testimony of Carl Leslie Johnson.)

Q. Is that a change apron you are wearing?

A. Well, it is just an apron—yes, sir; an apron one of the boys gave me.

Q. Is that an Examiner apron?

A. No, sir. It is a Herald apron. You see, I am partially paralyzed on my left side. I got this so it made it handy for me to get the change. [1864]

Q. Yes; I see. You check in with your main spot man at Third and Main, don't you?

A. Yes, sir.

Q. You do not check in with Mr. Pierce?

A. I don't check in to Mr. Pierce.

Redirect Examination

Q. (By Mr. Mouritsen) Mr. Johnson, what paper do you carry and display in your hands when you sell? A. The Examiner.

Q. On an average how many copies of the Examiner do you sell on a week night?

A. I think I have this list that I had last night. I can tell you. (Producing document) 16 Examiners last night, 3 times.

Q. Any news?

A. One Herald, 4 News.

Trial Examiner Kennedy: Is that an average night's work?

The Witness: No, sir, it is not. I have worked that corner. Usually I can make around 50 cents a night with all four papers. When I first started out at Third and Main, that would be an average night. I would have done well if I made that much.

(Testimony of Carl Leslie Johnson.)

I have worked down there all night for 15 cents, about, but I have got it up now where I can make a little [1865] better than that on an average. In fact, I have sold as high as 60 papers at Third and Main.

Q. (By Mr. Mouritsen) How old are you, Mr. Johnson? A. How old am I?

Q. Yes.

A. I will be 45 years old if I live to the 21st day of September.

Mr. Cosgrove: May it be stipulated that the testimony of the witness Carl Leslie Johnson has no application to the Los Angeles Times case?

Mr. Mouritsen: So stipulated.

Mr. Compton: The same stipulation as to the Los Angeles [1866] Evening Herald and Express?

Mr. Mouritsen: So stipulated.

Mr. Howard Binford: And the same as to the Stockholders Publishing Company?

Mr. Mouritsen: So stipulated.

HARRY LOUIS BUHL

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified in rebuttal as follows:

Direct Examination

Q. (By Mr. Mouritsen) Where do you live, Mr. Buhl?

A. 2117 Darwin Avenue, Los Angeles.

Q. You are here under subpoena?

A. I am.

Q. Do you at present handle the Los Angeles Examiner? A. I do.

Q. Where do you handle it?

A. Fourth and Main.

Q. How long have you handled it at that spot?

A. About a week—not quite a week.

Q. Prior to that time did you handle it at any other spot? A. Second and Main.

Q. How long did you handle it at that spot?

A. About three weeks. [1867]

Q. During the period that you have handled the Examiner at those two spots, where have you received the first edition of the Peach edition that you handle? A. Fifth and Main.

Q. And from whom do you receive them at that place?

A. The man that is working the Fifth and Main corner, main corner of the Examiner.

Q. Who is your district man?

A. The district man, I know him as Abe.

(Testimony of Harry Louis Buhl.)

Q. And do you know whether or not his last name is Pierce? A. I couldn't say.

Q. During the period that you have been on the two spots you have named, has Pierce ever personally counted out to you the copies of the Peach edition of the Examiner that you handle?

A. No. Except on Saturday.

Q. Where do you check in?

A. Belmont Grill, Fifth and Main.

Q. Why do you check in at the Belmont Grill rather than on your spot at Fourth and Main?

[1868]

The Witness: Because I was told to.

Q. (By Mr. Mouritsen) By whom?

A. Abe.

Q. And when did he tell you to check in at the Belmont Cafe?

A. When I was working the Second street corner.

Q. And that commenced about four weeks ago, is that correct?

A. Approximately three weeks ago.

Q. Where did the conversation take place?

A. At the corner of Second and Main when I was getting my first edition of the Double C—the 9:00 o'clock edition, in other words.

Q. Was anyone else there other than you and Pierce? A. No, sir.

Mr. Mouritsen: You may inquire.

(Testimony of Harry Louis Buhl.)

Cross Examination

Q. (By Mr. Hall) In your present location are you an off-spot news seller or are you a main-spot?

A. I am at the main spot.

Q. When you were at Second and Main streets were you main-spot or off-spot?

A. Main-spot.

Q. What other newspapers do you sell besides the Los Angeles Examiner? A. None. [1869]

Q. What magazines do you sell?

A. None.

Q. Has that been true both at Fourth and Main and Second and Main? A. No.

Q. Where did you sell Magazines or other newspapers?

A. I sold the Herald and News at Second and Main.

Q. Do you sell any magazines at Second and Main? A. No, sir.

Q. Were you off-spotting or main-spotting for the sale of the News and the Herald at Second and Main? A. I really don't know, sir.

Mr. Hall: that is all.

Redirect Examination

Q. (By Mr. Mouritsen) These copies of the Herald or the News that you sold, were they just one or two copies that were left with you by the Herald and Express boy who preceded you?

A. They were left there that I sell them if pos-

(Testimony of Harry Louis Buhl.)

sible and turn the money over to him the following day.

Q. And did they ever amount to more than two or three copies of the paper? A. No, sir.

Q. How old are you, Mr. Buhl?

A. 36. [1870]

Q. Are you a member of the Newsboys Union?

A. Not at present.

Q. During what hours during the week do you operate in your present spot?

A. I was told by Mr. Abe to be there at 6:00 o'clock in the evening, and the papers don't arrive on the corner until 6:45 to 7:00 o'clock.

Q. And how late do you operate?

A. 1:00.

Q. And that is the time when you check in to——

A. (Interrupting) That is the time I check in at Fifth and Main; yes, sir.

Q. Why do you check in at the Belmont Grill rather than at your spot?

The Witness: Because I was told to check in at Fifth and Main by Abe.

Recross Examination

Q. (By Mr. Hall) These Heralds and News that you sold for the other newsboy, you made a profit on them, didn't you?

A. I made the regular profit, yes, sir.

Mr. Hall: That is all. [1871]

(Testimony of Harry Louis Buhl.)

Redirect Examination

Q. (By Mr. Mouritsen) How many copies of the Examiner do you sell on an average night during the week at Fourth and Main?

A. At Fourth and Main?

Q. Yes.

A. That corner averages around 55 to 65.

Q. Who determines the number of papers of each edition that you receive?

A. The district manager.

Q. And that is Abe? A. Yes, sir.

Mr. Mouritsen: You may inquire.

Mr. Hall: Did you ever ask Abe Pierce for more papers than he gave you?

The Witness: I have never asked him, no. [1872]

JOHN DEERING

recalled as a witness by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and testified in rebuttal as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Deering, do you handle the Times on the corner of Fifth and Main at the present time? A. I do.

Q. How long have you been there?

A. Well, I have been there at least a year.

Q. And during that period have you observed

(Testimony of John Deering.)

how the Examiner [1873] man, Abe Pierce, makes delivery of the first copies of the Peach Edition of the Examiner? A. Yes, sir.

Q. Will you describe how that delivery takes place?

A. Well, the time of course varies a few moments, but he drives up Main Street from the direction of Sixth, blowing his horn, and turns the corner onto Fifth off of Main going east. He stops right there by the corner. And then I see the—some of the boys there, sometimes one, sometimes another, sometimes several of them, unload the papers from the car, and then he drives away.

Q. What occurs after that?

A. Then I see the main spot man handing out papers to various of the hustlers, and they start walking off down Main Street to their respective corners, whatever they happen to be; and also I see that same main spot man pass out papers to the four off-spots, the hustlers that are located at Fifth and Main, or its vicinity.

Q. And during the period that you have operated on that corner, have you ever seen Abe Pierce count out the papers personally to those off-spot boys on the corner of Fifth and Main?

A. No, sir, I never have.

Q. Have you ever observed him count out the copies of the Examiner personally to these other boys who go off with Examiners down Main Street?

[1874]

(Testimony of John Deering.)

A. No, sir.

Q. As a general rule, how long does Abe Pierce stay on the corner of Fifth and Main when he makes this delivery?

A. You mean the first Peach edition?

Q. The first Peach edition.

A. Just long enough for the papers to be unloaded off his car, and for him to start up his car and drive away.

Q. This is just a matter of a few seconds, is that correct?

A. It can't be over one or two moments at the most.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Hall) What newspaper did you say you were selling? A. Los Angeles Times.

Q. How long have you been selling the Times?

A. Well, I have been selling on the main spot, at the corner of Fifth and Main, for at least a year?

Q. At which corner is that main spot?

A. Well, up until 12:00 o'clock at night, it is the northwest corner. And then I move across the street at 12:00 o'clock to the northeast corner, but in my duties it is necessary for me to——

Q. (Interrupting) Now wait a minute; that is all I asked you; I didn't ask you what your duties were. Your spot, then, is the corner where the Rosslyn Hotel is?

A. United Cigar Store. [1875]

(Testimony of John Deering.)

Q. Well, that is in the building where the Rosslyn Hotel is? A. Yes, right by the corner.

Q. Do you stand at the corner or do you sell your papers on Fifth Street or on Main street?

A. Right at the corner of Fifth and Main.

Q. Right at the corner. That is all.

Mr. Cosgrove: May it be stipulated that the testimony given this afternoon by the witness John Deering has no application to the Los Angeles Times case?

Mr. Mouritsen: It is so stipulated.

Mr. Compton: The same stipulation with reference to the Los Angeles Evening Herald and Express?

Mr. Mouritsen: So stipulated.

Mr. Howard Binford: And the Stockholders Publishing Company?

Mr. Mouritsen: Yes. [1876]

HARRY SIEGEL

called as a witness by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified in rebuttal as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Siegel, do you handle the Times at the present time?

(Testimony of Harry Siegel.)

A. Yes, sir.

Q. Where do you handle it?

A. At the Rosslyn.

Q. And that is near the corner of Fifth and Main?

A. On Main Street. Fifth and Main, yes sir.

Q. How long have you been on that spot?

A. A year and a half.

Q. During part of the time that you have been on that spot—strike that. How long have you handled the Times on that spot?

A. Six weeks.

Q. And prior to that time did you handle any other paper on that spot?

A. No, sir; outside the Examiner for a year and a half.

Q. You say you handled the Examiner for a year and a half? A. A year and a half.

Q. And the Examiner alone?

A. Alone. [1877]

Q. For the past six weeks you handled the Times? A. The Times, yes.

Q. And the Times alone? A. Alone.

Q. During the period while you were on that spot was your Examiner district man Abe Pierce?

A. Yes, sir.

Q. And will you describe, if you will, how you obtained the copies of the first edition of the Peach edition of the Examiner that you received during that period?

(Testimony of Harry Siegel.)

A. Well, I got the first edition at half past 6:00 at the Belmont corner off the main spot man, main spot.

Q. Is that the main spot Examiner boy?

A. Examiner boy, yes.

Q. During that period did Abe Pierce ever personally count out to you the first copies of the Peach edition that you received? A. No, sir.

Q. Did he ever count out to you personally any subsequent editions of the Examiner that you received? A. No, sir.

Q. You obtained all of the copies from the main spot boy? A. Main spot boy.

Q. Were you on that spot while Sollie Sanchez was the main spot boy? [1878] A. Yes.

Q. And did you receive your Examiners from him? A. Yes, sir.

Q. And you observed how the delivery of the first copies of the Peach edition of the Examiners have been made for the last six weeks?

A. Yes, sir.

Q. And have they been made in substantially the manner that they were during the period when you received them? A. Yes, sir.

Mr. Mouritsen: You may inquire.

Cross Examination

Q. (By Mr. Hall) Where did you stand when you were selling the Los Angeles Examiner at Fifth and Main? A. Where did I stand?

Q. Yes. A. At the Hotel Rosslyn.

(Testimony of Harry Siegel.)

Q. Well, it has two entrances, doesn't it, one on Main Street and one on Fifth Street?

A. One on the Annex. I mean the Hotel Rosslyn, the New Hotel Rosslyn that is where I was standing.

Q. Yes. Now, you are talking about the Annex to the Hotel Rosslyn which is on the southwest——

A. (Interrupting) The southwest; yes, sir.

Q. (Continuing) ——the southeest corner of Fifth and Main streets; is that right. [1879]

A. Yes, sir.

Q. The entrance to that annex is on Fifth Street, isn't it? A. On Fifth Street.

Q. It is about 100 yards west of Main Street, isn't it? A. Yes, sir.

Q. And you stood in the entrance to that Annex when you sold Examiners, did you?

A. Yes, sir.

Q. During the last six weeks you have been selling the Times have you been standing in the same spot? A. The same spot.

Q. When do you get your first Times newspapers in the evening? A. The first?

Q. Yes. A. When they come out?

Q. Yes; the first bunch you get in the evening.

A. The first bunch I get, I get at 6:00 o'clock.

Q. 6:00 o'clock.

A. But I get away from the—I get from the alley, out of the alley, you know, I get away from the alley about 6:00 o'clock.

(Testimony of Harry Siegel.)

Q. You are an off spot Times man?

A. An off spot Times man.

Q. Where did you say you get that first bunch of Times? [1880]

A. From the main spot man.

Q. And where is he located?

A. At Main Street, Fifth and Main, around the south side. That is the main spot.

Q. The southwest corner

A. Southwest corner; yes, sir.

Q. So the Times has its main spot on the southwest corner?

A. The southwest corner; yes, sir.

Q. Where does the Examiner have its main spot at Fifth and Main Streets?

A. It is on the other side of that——

Q. Northeast corner?

A. Northeast, northeast side, the Belmont.

Q. Over at the Belmont Cafe.

A. Yes, the Belmont.

Q. After you get your Times at 6:00 o'clock then you go to the entrance to the Rosslyn Annex, do you, to sell them?

A. No, sir; not the Annex, the New Hotel Rosslyn?

Q. Oh, the New Hotel Rosslyn?

A. Yes. That is where I sell them, yes.

Q. You sell them right there at the entrance on Sixth? A. On Sixth Street.

Mr. Mouritsen: On what street?

(Testimony of Harry Siegel.)

Mr. Hall: On Fifth Street.

Q. (By Mr. Hall) Is it Fifth Street?

A. On Fifth Street; yes, sir. [1881]

Q. And that entrance to the hotel where you sell the Times is a hundred yards or so west of Main Street, isn't it? A. A hundred yards.

Trial Examiner Kennedy: Any thing further?

Q. (By Mr. Hall) So that commencing about 6:00 o'clock you are in that entrance selling your papers, from then on; is that correct?

A. From then on, yes.

Q. When do the Peach editions of the Examiner come into that intersection?

A. Into the section?

Q. Into that corner or that intersection? When are they dumped there, the first bunch?

A. Half past 6:00.

Q. Half past 6:00. At that time you are standing in the entrance, selling your Times, aren't you?

A. The Times, yes, sir.

Mr. Hall: That is all.

Trial Examiner Kennedy: Anything further with this witness?

Redirect Examination

Q. (By Mr. Mouritsen) How old are you, Mr. Siegel? A. 43.

Q. When you say that you are standing in the entrance of the Hotel Rosslyn, selling Times, is that out on the sidewalk [1882] in front of it?

A. Out on the sidewalk in front of it.

Mr. Mouritsen: That is all.

(Testimony of Harry Siegel.)

Trial Examiner Kennedy: You answered a question about a hundred yards. Have you ever measured that distance?

The Witness: A hundred yards?

Trial Examiner Kennedy: Yes.

The Witness No, sir.

Mr. Mouritsen: May it be stipulated that the testimony of the witness Harry Siegel has no application to the Los Angeles Times case?

Mr. Mouritsen: I believe some of the cross examination did have, Mr. Cosgrove.

Mr. Cosgrove: Some cross examination?

Mr. Mouritsen: Yes.

Mr. Cosgrove: Well, other than some of the cross examination may it be stipulated that it has no application to the Los Angeles Times?

Mr. Mouritsen: Other than cross examination it may be so stipulated. [1883]

Mr. Compton: Will you stipulate that none of the testimony of the witness Harry Siegel is intended to have any application to the case of the Los Angeles Evening Herald and Express?

Mr. Mouritsen: So stipulated.

Mr. Howard Binford: And the Stockholders Publishing Company?

Mr. Mouritsen: So stipulated. [1884]

Thursday, June 27, 1940

Met, pursuant to adjournment, at 9:30 o'clock a. m. [1887]

Mr. Mouritsen: Mr. Examiner, just in the event

that there might be any question with reference to the union's intended meaning of what is a "temporary newsboy" in the second amended petition filed in the matter of Hearst Publications, Inc., Los Angeles Evening Herald and Express Department, which is in evidence as Board's 1-BB, I think that the record should show that the union's intended meaning of "temporary newsboy" is that a "temporary newsboy" is a full time newsboy or check man who has been engaged in the street sale of the Los Angeles Evening Herald and Express for a period of 30 days or less;

And that the term "casual newsboy" is synonymous with "bootjacker."

Also, with reference to the second amended petition filed in the matter of Stockholders Publishing Company, Inc., XXI-R-927, which is in evidence as Board's Exhibit 1-Y, that the union's intended meaning with reference to a "temporary newsboy" in that matter is that a "temporary newsboy" is a full time newsboy or check man who has been engaged in the street sale of the News for a period of 30 days or less; [1902]

And also that the term "casual newsboy" is synonymous with "bootjacker."

Mr. Compton: Mr. Mouritsen, will it be stipulated that the answer and motion heretofore filed by the Los Angeles Evening Herald and Express will be deemed addressed to the petition as amended to date, and also as explained by the union's contention?

Mr. Mouritsen: So stipulated.

Mr. L. B. Binford: I believe we have that stipulation already, except as it might apply to the remarks just made.

Mr. Mouritsen: Yes.

Mr. L. B. Binford: That will be so stipulated?

Mr. Mouritsen: Yes, that may be so stipulated.

ROBERT L. SMITH

a witness recalled by and in behalf of the Stockholders Publishing Company, having been previously duly sworn, was examined and further testified as follows:

Direct Examination

Trial Examiner Kennedy: You have been on the stand be- [1903] fore?

The Witness: Yes.

Q. (By Mr. L. B. Binford) Mr. Smith, under date of June 18, 1940, in the morning session, you gave certain testimony and there is reported in Volume 8 at page 977 your answer to a certain question; and I am now reading from line 25, page 977 of the transcript, which reads as follows:

"You understand that it was the Herald organization that took over the joint distribution and sale?"

And I would ask you if you would please state just what you mean in using the words "joint distribution and sale."

A. Well, I more particularly had reference, of

(Testimony of Robert L. Smith.)

course, to the sale of the papers by the newsboys and intended no reference to the activities or distribution engaged in by the district men since, of course, those were independent as to our organization and independent as to the Herald——

Q. And by the use——

A. And always have been.

Q. And by the use, therefore, of the word "distribution" you did not mean to refer to the distribution made by the district men of the respective papers? A. No.

Mr. L. B. Binford: That is all.

Cross Examination

Q. (By Mr. Mouritsen) When you referred to the "Herald [1904] organization" you referred to the Herald newsboys; is that correct?

A. Yes, in this respect: That the Herald, because of its longer period of years in the field and its larger street sale, was made available for sale in more locations than the News; and it was practical upon going to a joint sale to have, in the main, the same outlets that previously had sold the Herald also sell the News.

Mr. Cosgrove: May it be stipulated that the testimony of the witness Robert L. Smith has no application to the Los Angeles Times case?

Mr. Mouritsen: Yes; that may be so stipulated.

Mr. Hall: Will the same stipulation be made with reference to the Los Angeles Examiner?

Mr. Mouritsen: So stipulated. [1905]

Trial Examiner Kennedy: Now, is it admitted by the Stockholders Publishing Company that Board's Exhibit 9 contains a list of employees of that corporation?

Mr. L. B. Binford: It is admitted by Stockholders Publishing Company that Board's Exhibit 9 contains a list of persons who are on the payroll of Stockholders Publishing Company as wholesalers of papers, but not as newsboys.

Trial Examiner Kennedy: Well, do you take a position as to whether or not they are employees within the definition of the National Labor Relations Act?

Mr. L. B. Binford: We accept the—strike the word "accept"—we take the position that such boys who are wholesalers and who are on our payroll are our employees for that restricted purpose only, and they are not on our payroll as newsboys in any shape, form or fashion. [1911]

Mr. Compton: I would like to offer something. Mr. Mouritsen, have you had the opportunity to check the accuracy of the quotations in my proposed exhibits as to Rule 8.19 of the rules of the California Unemployment Insurance Act and Ruling 64 of the Social Security Tax Unit, which I gave you yesterday?

Mr. Mouritsen: I have not, Mr. Compton, but if you will present them and say they are correct I will accept them.

Mr. Compton: I will so present them and say that

they are correct quotations. At this time I offer as Evening Herald and Express Exhibit No. 7 Rule 8.19 of the rules under the California Unemployment Insurance Act, being Chapter 352, Laws of 1935 as amended, as revised effective May 1st, 1938. It is Evening Herald and Express exhibit next in order, and [1912] I believe it is 7.

Mr. Hall: It is Herald and Express exhibit, isn't it, not the Stockholders'?

Mr. Compton: Yes. I corrected that. I next offer Social Security Tax Unit Ruling No. 64 as Evening Herald and Express Exhibit No. 8. Is more than one needed?

Trial Examiner Kennedy: I beg your pardon?

Mr. Compton: Is more than one copy needed?

Trial Examiner Kennedy: No. No, not unless it is a pleading.

Mr. Compton: If the Examiner please, I wish at this time——

Mr. Hall: Might I interrupt, Mr. Compton?

Mr. Compton: Yes.

Mr. Hall: Mr. Mouritsen, will it be stipulated that the exhibits just offered as the Herald and Express Exhibit No. 7 and Herald and Express Exhibit No. 8, may be applicable in the case involving Los Angeles Examiner?

Mr. Cosgrove: And Los Angeles Times?

Mr. L. B. Binford: And Stockholders Publishing Company?

Mr. Mouritsen: That may be so stipulated.

Trial Examiner Kennedy: Are you offering them in evidence?

Mr. Compton: Yes.

Trial Examiner Kennedy: Any objection? [1913]

Mr. Mouritsen: No objection.

Trial Examiner Kennedy: Received.

(The documents referred to were received in evidence and marked Evening Herald and Express Exhibit No. 7 and Evening Herald and Express Exhibit No. 8.) [1914]

PATRICK COMORRE

a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and further testified as follows:

Direct Examination

Q. (By Mr. Mouritsen) Mr. Comorre, I show you a document that has been marked Board's Exhibit 11 in evidence, and I will direct your attention to a box in the center of the picture between two racks. I will ask you if you made this picture?

A. I did. I took that picture.

Q. Did you take it with an ordinary commercial kokak? A. Well, it is mine.

Q. Is it a regular——

A. Regular kokak, that is right.

Q. And I direct your attention to certain let-

(Testimony of Patrick Comorre.)

ters that appear beneath the placards that are on the box, and ask you if you examined what the printed matter on the box underneath the placards was?

A. I did. I pulled the card over and looked at it before I [1925] took a picture of it.

Q. And what was the legend that appeared upon the box?

The Witness: Los Angeles Herald and Express.

Q. (By Mr. Mouritsen) Was this a box used by a Herald and Express newsboy?

A. That is right.

Q. At what place?

A. Seventh and Alvarado.

Q. And do you recall the newsboy's name?

A. Yes, I do.

Q. What was it? A. Nickerson.

Q. And have you observed such boxes in use by Herald and Express newsboys at other places within the city of Los [1926] Angeles?

A. Yes; mostly in the outskirts, but there are some in the outer part of the downtown area.

Mr. Mouritsen: I believe, if the Examiner please, before my offer was concerned with the racks, but now I offer the picture in evidence, that part of it that bears the likeness of the box.

Trial Examiner Kennedy: Overruled. Received in evidence.

(The document referred to was received in evidence and marked Board's Exhibit No. 11.)

Mr. Mouritsen: That is all. [1927]

Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-C-1840

In the Matter of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.

Case No. XXI-C-1843

In the Matter of The Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.

Room 808, United States Post Office and
Court House Building,
Spring, Temple and Main Streets,
Los Angeles, California,

November 10, 1941.

The hearing in the above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a.m.

Before: W. P. Webb, Trial Examiner.

Appearances:

JAMES A. COBEY, Attorney for the National Labor Relations Board. [1929]

MESSRS. FLINT & MacKAY, By H. S. MacKAY, Jr., EDWARD L. COMPTON and D. W. HAMBLIN, 1232 Rowan Building, 458 South Spring Street, Los Angeles, California, appearing for the respondent, Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department).

MESSRS. COSGROVE & O'NEIL, By T. B. COSGROVE and F. B. YOAKUM, Jr., 1031 Rowan Building, Los Angeles, California, appearing for the respondent, The Times-Mirror Company.

PATRICK COMORRE, 212 West 3rd Street, Los Angeles, California, appearing for Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. [1930]

Trial Examiner Webb: Gentlemen, if all the parties in interest are present, we will open the hearing.

This is a formal hearing in the matter of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., Case No. XXI-C-1840; also in the matter of The Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., Case No. XXI-C-1843.

Off the record.

(Discussion off the record.)

Trial Examiner Webb: Back on the record.

Under order of the Board dated October 23, 1941, these two cases are consolidated.

Counsel will please state all appearances for the record.

Mr. Cobey: James A. Cobey appearing for the National Labor Relations Board.

Trial Examiner Webb: In both cases?

Mr. Cobey: In both cases.

Trial Examiner Webb: Now, in case No. 1840?

Mr. Compton: Flint & MacKay, H. S. MacKay, Jr., Edward L. Compton, and D. W. Hamblin for Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department).

Trial Examiner Webb: By Mr. Compton?

Mr. Compton: That is correct. [1932]

Trial Examiner Webb: Is anyone representing the union?

Mr. Comorre: Patrick Comorre for the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.; secretary.

Trial Examiner Webb: Now, just a moment. Will you kindly give your address, Mr. Compton?

Mr. Compton: 1232 Rowan Building, 458 South Spring Street, Los Angeles, California.

Trial Examiner Webb: And your address, Mr. Comorre?

Mr. Comorre: It is room 304 Currier Building, 212 West Third Street, Los Angeles, California.

Trial Examiner Webb: Now, The Times-Mirror case?

Mr. Yoakum: Cosgrove & O'Neil, by T. B. Cosgrove and F. B. Yoakum, Jr., Mr. Yoakum being present, for The Times-Mirror Company. Our address is 1031 Rowan Building, Los Angeles, California.

Trial Examiner Webb: The Trial Examiner appearing for the National Labor Relations Board is W. P. Webb, Washington, D. C. [1933]

The Trial Examiner will allow an automatic exception to all adverse rulings, and upon appropriate order an objection and exception will be permitted to stand to an entire line of questioning. [1935]

(Thereupon the documents referred to were marked as Board's Exhibits 1-A to 1-I, both inclusive, for identification.)

Trial Examiner Webb: Any objection?

Mr. Yoakum: If the Court pleas', may it be stipulated that these documents have no reference to the Los Angeles Times, Case No. 1843? [1939]

Mr. Cobey: I might state, Mr. Examiner, that there are just two copies of two documents included in those pleadings which also apply to the Times, namely, the order consolidating cases——

Trial Examiner Webb: Let's call it by its name, The Times-Mirror Company.

Mr. Cobey: The Times-Mirror Company. (Continuing) ——and the second document is the order designating yourself as Trial Examiner, and I have had copies of those documents made, and they are included as a part of Board's Exhibit 2, which I

am about to introduce with respect to The Times-Mirror.

Trial Examiner Webb: Does that satisfy your objection?

Mr. Yoakum: Yes, that will be all right.

Trial Examiner Webb: Do you withdraw your objection?

Mr. Yoakum: I didn't make any objection. It was just to get the understanding that it didn't apply except as to the order of consolidation and the order designating yourself as Trial Examiner. Is that your understanding?

Mr. Cobey: Yes, that is my understanding.

Mr. Yoakum: I have no objection.

Trial Examiner Webb: They are admitted.

(Thereupon the documents heretofore marked as Board's Exhibits 1-A to 1-I, both inclusive, for identification, were received in evidence.) [The pertinent exhibits here referred to are set out at pages 1 to 17 and 244 to 258 of this printed record.] [1940]

Trial Examiner Webb: Any objection?

Mr. Yoakum: No objection.

Trial Examiner Webb: They are admitted.

(Thereupon the documents heretofore marked as Board's Exhibits 2-A to 2-I, both inclusive, for identification, were received in evidence.)

BOARD'S EXHIBIT No. 2-B.

[Title of Board and Causes.]

Case No. XXI-C-1840
Case No. XXI-C-1843

ORDER CONSOLIDATING CASES

Charges, pursuant to Section 10(b) of the Act, having been filed in the above-entitled cases, and the Board having duly considered the matter and deeming it necessary in order to effectuate the purposes of the National Labor Relations Act,

It Is Hereby Ordered, pursuant to Article II, Section 36(b) of National Labor Relations Board Rules and Regulations—Series 2, as amended, that these cases be, and they hereby are, consolidated.

Dated, Washington, D. C., October 23, 1941.

By direction of the Board:

[Seal] BEATRICE M. STERN
Executive Secretary

Mr. Cobey: I should like to offer at this time, to be marked as Board's Exhibit 3, for identification, with the appropriate subdivisions, certain prior proceedings had before the Board, known as In the Matter of Stockholders Publishing Company, Incorporated and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., et al. These are cases Nos. R-1923 to R-1926, inclusive. [1943]

Trial Examiner Webb: Any objection?

Mr. Yoakum: Yes. If the Court please, except insofar as the opinion, the various amendments and supplemental decisions refer specifically to the case of The Times-Mirror Company, being local Case No. XXI-R-1062 and R-1925, we object on the ground that the same have no relevancy as to The Times-Mirror Company, are hearsay and incompetent as to it. [1945]

Trial Examiner Webb: I don't suppose that anything appearing in this supplemental decision and certification of representatives which doesn't apply to The Times-Mirror Company would be used against it, in any event?

Mr. Yoakum: Well, if we could have that understanding, your Honor, that it is the position that the matters that refer to the Times are the only ones that are intended in this proceeding to be applicable to the Times, we could withdraw the objection. We just don't want the record to be in such shape that there can be any possible ground for claiming that what the record shows with reference to activities of the newsboys of the Herald, the Los Angeles Examiner and the Daily News, all of whom were involved in the prior proceedings, have any bearing upon or binding effect upon the Times with respect to the status between the Times and its newsboys.

I might say that throughout the prior proceeding we had innumerable stipulations to that effect. For example, a newsboy selling the Examiner would be put on the stand and interrogated at considerable length, and in the course of his examina-

tion counsel for the Board and counsel for all papers and the Examiner entered into a stipulation that it didn't pertain to any case except the Examiner case, if that happened to be the boy who was on the stand. That is no more than I am asking here.

Trial Examiner Webb: That appears to be fair. Have you [1947] anything further to say, Mr. Cobey?

Mr. Cobey: The only thing I wanted to point out was that, in so far as the Board is concerned, we are perfectly willing to allocate this evidence to the particular newspapers, and Mr. Yoakum is quite right, that in the prior proceedings such stipulations were entered into, but at this time I don't think it is necessary for the Board to state what evidence should be allocated to which paper; I mean, conclusively and in binding fashion or definitive fashion at all.

We are perfectly in agreement with Mr. Yoakum's position that evidence relating to the practices of one paper should not bind the other paper, but where the same newsboys sell the papers of both publishers, it seems to me that you have a difficult job of deciding whether or not the evidence should be allocated to the one or the other, or whether it should not be allocated to both.

Trial Examiner Webb: It might be relevant in a witness' testimony with respect to methods ordinarily pursued by newspapers, especially Los Angeles newspapers, in the distribution of the papers.

As background, that might become relevant. I don't know. I take it, you are introducing these documents as just what they purport to be.

Mr. Cobey: Yes, sir, that is all.

Trial Examiner Webb: Official documents——

Mr. Cobey: That is right. [1948]

Mr. Cobey: I think the primary purpose, Mr. Examiner, is simply to give the respondents notice of the prior proceedings of the Board, upon which the Board will rely.

Trial Examiner Webb: The objection is overruled. Any further objection?

Mr. Compton: Yes. If your Honor please, on behalf of the Los Angeles Evening Herald & Express Department of the Hearst Publications, Incorporated, an objection is laid to all of Exhibit 3, Exhibits 3-A to 3-G, inclusive, except in so far as those exhibits on their face tend to refer to matters involved in Case No. R-1924, on the ground that the [1949] same are incompetent, irrelevant and immaterial, and hearsay as to the Los Angeles Evening Herald & Express Department of the Hearst Publications, Incorporated.

Trial Examiner Webb: I don't see any reference in these documents to Case No. 1924.

Mr. Cobey: Mr. Examiner, that is one of the consolidated cases. In the consolidated cases there are case numbers 1923 to 1926, inclusive.

Trial Examiner Webb: Oh, yes. That is included, yes.

The objection is overruled. They are admitted.

(Thereupon the documents heretofore marked as Board's Exhibits 3-A to 3-G, both inclusive, for identification, were received in evidence.) [1950]

PATRICK COMORRE

a witness called for and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Cobey) Will you please state your full name? A. Patrick Comorre.

Q. Where do you live, Mr. Comorre?

A. 1808 Kemper Street.

Q. What is your present occupation?

A. Secretary of the Newsboys Union.

Q. When you say "the Newsboys Union", are you referring to [1951] the union which is a party in this proceeding? A. Yes, sir.

Trial Examiner Webb: At this point I believe it would be a good idea to have it understood that as we proceed we will adopt some short names for the respondents, and also in referring to the union as the union. I don't think there is any other union involved here, is there?

The Witness: No.

Mr. Cobey: I would suggest that we refer to this particular local as the union, and, also, refer to The Times-Mirror Company as the Times, and

(Testimony of Patrick Comorre.)

the Hearst Publications, Incorporated, as Hearst.

Trial Examiner Webb: Is that satisfactory?

Mr. Compton: I would suggest that as to this respondent, we call it the Herald-Express, for the reason that the Examiner is also a Hearst paper.

Mr. Cobey: Yes. Thank you.

Mr. Compton: For that reason it would be better if we called this respondent the Herald-Express or the Herald.

Trial Examiner Webb: Yes. It seems to be referred to in the complaint as the Herald.

Mr. Cobey: Yes, that correction is perfectly agreeable to me.

Trial Examiner Webb: That will be the Herald, respondent, and the Times, respondent, and the union. [1952]

Mr. Yoakum: That is satisfactory.

Mr. Compton: Yes.

Mr. Cobey: That is satisfactory.

Trial Examiner Webb: Proceed.

Q. (By Mr. Cobey) Mr. Comorre, will you state whether or not at the present time you hold any office in the union?

A. Yes, I do. I am the secretary of the Newsboys Union.

Q. How long have you held that office?

A. Since September, 1940.

Q. Now, prior to September, 1940, were you an officer of the union or not?

A. Yes, I was secretary of the Labor Board

(Testimony of Patrick Comorre.)

Committee or the Legal Committee, that was handling the Board case.

Q. What was the function of that committee?

A. Well, it was to take care of the work and prepare stuff to file charges, or something like that, with the Labor Board, and prepare for license, and so forth; sort of an advisory committee for the union, to take up those matters.

Q. When was that committee set up?

A. Oh, well, there has always been a legal committee, more or less, since the union has been in existence.

Q. Can you tell us whether or not that committee functioned in the prior representation proceedings? A. Yes, it did.

Mr. Cobey: Can it be agreed that the hearing in the [1953] prior representation proceedings took place in June of 1940?

Mr. Yoakum: I think it can.

Mr. Cobey: I think the Board's exhibits will show it ran from June 10th to June 27th, 1940.

Mr. Yoakum: June 10th I know is the date it began. I don't know the date of closing.

Mr. Cobey: Board's Exhibit 3 will show that.

Mr. Yoakum: That is right.

Mr. Compton: So stipulated.

Q. (By Mr. Cobey) Then, as I understand it, Mr. Comorre, between June of 1940 and September of 1940 you were chairman of this legal committee of the union? A. Yes, sir.

(Testimony of Patrick Comorre.)

Q. And from September 1940 to date you have been secretary?

A. Well, may I make a correction?

Q. Yes.

A. I was secretary of that committee. You said "chairman." I was secretary of the committee.

Q. You were secretary of the legal committee?

A. That is right.

Q. And in September 1940 you became secretary of the union?

A. And still secretary of the committee.

Q. Yes. A. Yes.

Mr. Cobey: For the purpose of saving time, I am going to [1954] ask a rather general question, and counsel may wish to object to it.

Q. (By Mr. Cobey) You have been connected with the union practically since its inception, have you not?

A. Well, I have been with the C.I.O. since its earliest steps here in California, and then I was assigned to the Newsboys Union in 1938.

Q. I think it is correct, is it not, that you testified with respect to the operations and functioning of the union—— A. Yes.

Q. ——in this prior proceeding in June 1940, at which time the hearing was held?

A. I believe I did. Yes, I believe I did.

Q. Now, has there been any change in the functioning and general operation of the union since June, 1940?

(Testimony of Patrick Comorre.)

A. No, not any big changes. Maybe some little, minor changes. Maybe some officer left or quit, or some shop steward changed, or something like that; not any major changes.

Q. I see. The union has since June 1940 been holding regular meetings? A. Yes, sir.

Q. And is collecting dues regularly from its membership? A. Yes, sir.

Q. Can you tell us whether or not the union has also been attempting to serve as bargaining representative for its [1955] members with the various publishers? A. They have.

Q. Mr. Comorre, can you tell us whether or not your union is affiliated with any national organization?

A. It is. It is affiliated with the National C.I.O. in Washington, D. C.

Q. That is the Congress of Industrial Organizations? A. That is correct.

Q. How long has it been so affiliated, roughly?

A. Well, this Congress of Industrial Organization has been changed. It used to be the Committee of Industrial Organizations and we were a part of the organization at that time, and then it was changed to Congress of Industrial Organizations and we were issued a charter immediately under the change of that name.

Q. Would it be correct to say that since its inception the union has been affiliated with the C.I.O.?

A. It would.

Q. And it is so affiliated today?

(Testimony of Patrick Comorre.)

A. It is.

Mr. Cobey: That is all.

Mr. Yoakum: No questions.

Mr. Compton: No questions.

Trial Examiner Webb: Now, don't you think we should have some further evidence in the record with respect to the [1956] appropriate unit?

Mr. Cobey: I don't think so, Mr. Examiner, because the appropriate unit has already been found by the Board in its prior proceedings, and I see no reason for any further evidence.

Q. (By Trial Examiner Webb) Mr. Comorre, it states here in the complaint, in respect to the Herald, respondent, that the unit appropriate for purposes of collective bargaining consists of all employees of the respondent who are full-time employees and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys. Is it the contention of the union that that is the appropriate unit now?

A. Well, I don't think there has been any change, as far as that is concerned.

Q. And the union considers that that is the appropriate unit for purposes of collective bargaining? A. That is right.

Mr. Yoakum: That refers to the Herald case only, your Honor,—the present question?

Trial Examiner Webb: Yes.

Q. (By Trial Examiner Webb) Now, the com-

(Testimony of Patrick Comorre.)

plaint in respect to the Times, respondent, alleges that the unit for the purposes of collective bargaining consists of all employees of respondent "who are newsboys engaged in the street sale of the Times at established spots, 4 or more hours a day, 5 [1957] or more hours a week."

Mr. Yoakum: Days.

Trial Examiner Webb: What is that?

Mr. Yoakum: "Five or more days a week."

Trial Examiner Webb: Oh, yes. This is a very indistinct copy that I have.

Q. (By Trial Examiner Webb) (Continuing) "——five or more days a week within Los Angeles and Glendale, California, excluding temporary newsboys."

Now, is that the unit that the union considers appropriate in connection with the Herald, respondent? A. The Times, you mean?

Q. How is that?

Mr. Cobey: In connection with the Times, sir.

Q. (By Trial Examiner Webb) In connection with the Times, I mean?

A. That is right.

Mr. Cobey: It seems to me to appear from Board's Exhibit 3 that the union has been certified as the exclusive bargaining representative of the employees within those units.

Trial Examiner Webb: But I want to know if it is the contention of the union that these are the appropriate units at this time.

(Testimony of Patrick Comorre.)

The Witness: Yes, I think so. I mean, there has been little change. We have had a few more employees come into the [1958] union, or something like that, but that doesn't have any effect on the people——

Trial Examiner Webb: Not at all.

The Witness: Yes, that is correct.

Q. (By Trial Examiner Webb) You say the union is duly chartered by the International?

A. By the C.I.O. directly. Not by the international; directly by the C.I.O.

Trial Examiner Webb: Any further questions?

Mr. Yoakum: No questions by the Times.

Mr. Compton: No questions.

Mr. Cobey: No further questions by the Board.

Trial Examiner Webb: All right. [1959]

Mr. Yoakum: Now, as an exhibit to the complaint in the Times case and in connection with our affirmative defense, which we set up, is the decision in an Industrial Accident Commission case, entitled, Pendergast against Times-Mirror Publishing Company, and we at this time as Times Exhibit No. 1 offer a certified copy and a copy of the certified copy in evidence. [1962]

Trial Examiner Webb: Any objection?

Mr. Cobey: Yes. Mr. Examiner, I would like to object to its admission on the ground it is irrelevant to the issues in this case. It is a decision

of the Industrial Accident Commission, under the State Workmen's Compensation legislation and it pertains to the issue as to whether or not, for the purposes of that particular state legislation, the news vendors are employees and, therefore, within the protection of the Workmen's Compensation Act. [1963]

Trial Examiner Webb: Have you anything further to say in respect to what counsel for the Board has said, Mr. Yoakum?

Mr. Yoakum: Yes, your Honor. This decision in this Pendergast case was rendered at about the same time that the prior Board hearing commenced. The exact date was August 9, 1940. The man involved was a news vendor of the Times at the time of the former hearing, as appears from the record in that case.

We allege in our answer here that the activity of this news vendor is the same as the activities of those Times news vendors who testified in the representation proceeding, so we are offering this ruling, and if it is admitted, we will follow up with an offer of the transcript of the proceedings before the Industrial Accident Commission.

I think it is decidedly relevant to the inquiry. Whether the Board will agree or not with the conclusion, I can't predict. Mr. Kennedy, who presided at the prior hearing, expressed considerable interest in rulings of state boards, and I think for that reason that the matter is decidedly material. It certainly is responsive to an issue raised by

the pleadings. We affirmatively set this matter up as a [1964] defense. [1965]

Trial Examiner Webb: I don't object to admitting in evidence the document which has been offered here, which is the findings of fact and decision. The objection is overruled. It is admitted.

(Thereupon the document referred to was marked as Times Exhibit No. 1, and received in evidence.) [1969]

Mr. Yoakum: We next offer as Times Exhibit 3 a certified copy of findings and award of the Industrial Accident Commission of the State of California in the case entitled: Ike Reich against The Times-Mirror Company, et al., filed August 25, 1941. This is similar to Exhibit No. 1.

Trial Examiner Webb: In view of the fact that you are now introducing this other document, which purports to be the findings of the State Commission with respect to this other individual, I am inclined to reject now the document that I admitted in respect to Pendergast and put that also in the rejected documents. I think I shall do that.

So, Miss Reporter, you will take that document, the one of Pendergast, the one I admitted, and I withdraw it from the admitted documents and put it in the rejected exhibits.

(Thereupon the document, heretofore received in evidence as Times Exhibit No. 1, was rejected and is so returned herewith.) [1972]

Trial Examiner Webb: This (indicating), also, will go into the rejected file.

Mr. Yoakum: Did we have a ruling on Exhibit No. 3?

Trial Examiner Webb: I sustained the objection to that.

Mr. Yoakum: I didn't hear one made, your Honor.

Trial Examiner Webb: I don't believe there was. I didn't ask, but it being a similar document, I simply rejected it without objection, and it goes into the rejected documents.

(Thereupon the document referred to was marked as Times Rejected Exhibit No. 3, and is so returned herewith.) [1973]

Mr. Yoakum: I understand correctly, your Honor, that we have an automatic exception to these rulings? [1974]

November 12, 1941.

The hearing in the above-entitled matter came on for hearing, pursuant to adjournment, at 2:00 o'clock p. m. [1980]

Mr. Corey: I should like to offer, to be marked for identification as Board's Exhibit 4, a stipulation in the matter of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. This stipulation

is dated November 12, 1941 and is signed by counsel for the aforementioned parties. I would like to offer it, to be marked for identification as Board's Exhibit 4. [1983]

Trial Examiner Webb: The stipulation is received in evidence and may be marked accordingly.

(Thereupon the document referred to was marked as Board's Exhibit No. 4, and received in evidence.)

BOARD EXHIBIT No. 4

CONGRESS OF INDUSTRIAL ORGANIZATIONS
CIO

Certificate of Affiliation

By these presents, Be It Known That:

This Certificate of Affiliation with such rights and privileges as may from time to time be determined is hereby granted to

Newsboys.
Local Industrial Union, No. 75, Los Angeles, California

Charter Members

Al. Schwartz	Leonard Sherman
Louis Schwartz	Phillip Bloom
David Small	Ben Rothman
Abe Pipesburg	Pat Commore
Rubin Charon	Art Page

This Certificate of Affiliation with all of the rights and privileges appurtenant thereto is granted upon the condition that the said Union shall at all times comply with the Constitution and the Rules and the Regulations thereunder of the Congress of Industrial Organizations; and in the event of violation thereof this Certificate may, pursuant to said Constitution, and Rules and Regulations be revoked, whereupon all rights and privileges appurtenant thereto shall be annulled.

So long as this condition shall be duly performed in all respects, the Congress of Industrial Organizations does hereby agree to promote and assist the said Union in the exercise of all of the rights and privileges secured hereunder.

In Witness Whereof we have hereunto attached our signatures and caused the seal of the Congress of Industrial Organizations to be affixed.

Dated this 16th day of November, 1938.

[Seal] JOHN L. LEWIS,
President.
JAMES B. CAREY,
Secretary.

Mr. Cobey: I should like now to offer this exhibit, which [1985] has been marked as Board's Exhibit 5, for identification, in evidence.

Mr. Yoakum: Is this Exhibit 5 you are now offering?

Mr. Cobey: Yes.

Mr. Yoakum: No objection.

Trial Examiner Webb: It is admitted.

(Thereupon the documents heretofore marked as Board's Exhibit 5 for identification, were received in evidence.) [Exhibit No. 5 is set out at page 283 of this printed record.]

Mr. Yoakum: It is understood in connection with Exhibit 4 that that refers only to the Herald case and not to the case of the Los Angeles Times?

Mr. Cobey: That is correct.

Trial Examiner Webb: I think it so states in the stipulation.

Mr. Compton: And in respect of Exhibit No. 5, the same ruling would be made, that it applies only to the Los Angeles Times case and not to the case against the Los Angeles Evening Herald & Express? [1986]

Mr. Cobey: The Board's position would be identical.

Trial Examiner Webb: I don't see that that is a modification of either one of the stipulations, as they show for themselves.

Mr. Yoakum: I don't believe it is necessary to renew the motion which we have on file, the motion to dismiss, so without waiving any rights under that, I will proceed.

Trial Examiner Webb: Certainly. That motion is still pending and, as I stated when the hearing first opened, the ruling is reserved. [1987]

Mr. Compton: On behalf of the Los Angeles Evening Herald & Express, without waiving our motion to dismiss, heretofore filed herein, I would like to point out that we have filed in this action, in the office of the Clerk of the Labor Board, an affidavit of service of the motion to dismiss and the answer upon the Newsboys Union.

It is my recollection that at the session of last Monday Mr. Comorre admitted the receipt of those documents and, therefore, it would not be necessary at this time to introduce the affidavit of service. [1991]

That is correct, is it not, Mr. Cobey?

Mr. Cobey: I think your recollection is correct. If it is not, why, Mr. Comorre is willing to state right now, I am sure, that he received those documents.

Mr. Comorre: Are those the documents in regard to the answer to the complaint?

Mr. Compton: Yes.

Mr. Comorre: Yes.

Mr. Compton: The affidavit of service was actually on file at the time of the commencement of this hearing, but, apparently, had not been called to Mr. Cobey's attention.

Mr. Cobey: That is correct. It has been called to my attention since then.

Mr. Compton: If the Court please, it had been my intention to offer the same exhibits on behalf of the Los Angeles Evening Herald & Express that were offered by the Times, being Exhibits, Times Exhibits Nos. 1 to 5, inclusive. It had been my hope that we

would not need to duplicate those exhibits. Therefore, I would like at this time to offer a stipulation to Mr. Cobey that the exhibits, Times Exhibits 1 to 5, both inclusive, were offered by the Los Angeles Evening Herald & Express and have the Court make the same ruling that [1992] was made in the Times case in respect of those exhibits. In that way we will save duplication of the exhibits and duplication of the record going back to Washington, and any further record that need be prepared.

Trial Examiner Webb: I see no reason to offer duplicate exhibits, and why should the Herald want to introduce the same exhibits that the Times has already introduced?

Mr. Compton: We want them considered in our case, as rejected exhibits, or in whatever manner the Board does consider them. It seems to me as necessary to offer them and to have them refused and considered as rejected exhibits in Case No. XI-C-1840, in order to bring them to the attention of the Board.

Trial Examiner Webb: I don't object to that at all. That may be done.

Mr. Cobey: I am perfectly agreeable to that procedure, Mr. Compton, subject to the further objection on the Board's part that, so far as I can see, none of the proffered exhibits concern the respondent, the Herald.

Mr. Compton: That is correct.

Mr. Cobey: And renewing, of course, the objections I previously made to the Times exhibits.

Mr. Compton: Yes, and by that you mean that the case in question did not concern news vendors who were selling the Los Angeles Herald & Express, but two of them concerned news [1993] vendors selling the Times and one of them selling the Examiner.

Mr. Cobey: Yes, that is the substance of my further objection, in addition to their being offered as exhibits by the Herald.

Mr. Compton: That is all right. [1994]

Mr. Cobey: At this time I should like to move to conform the pleadings to the proof. That is merely a formal motion so far as its content is concerned, and that merely covers the spelling of names, dates, and that type of matter.

Trial Examiner Webb: Is there any objection?

Mr. Yoakum: Certainly, no objection with respect to dates and spelling, but I don't like to be a party to some omnibus type of stipulation that might cover things that I don't have in mind. I don't believe that it does here, but I would appreciate it if Mr. Cobey could be specific. I don't know wherein there is any great discrepancy between dates as alleged in the pleadings and as has been shown here.

Trial Examiner Webb: I may say that is the usual motion that is made by the Board at the conclusion of the hearing, [1996] and it certainly could not possibly contain any surprise or any material amendment to the complaint. Certainly not. Otherwise, I would not grant the motion. As I understand it, it applies only to minor matters, such as he indicated, dates and names.

Mr. Cobey: Mr. Examiner, I might state that the making of that motion may be merely an excess of caution on my part, because my recollection is as Mr. Yoakum's, that there have been no errors. It is to correct errors of form, and certainly not errors of substance.

Mr. Yoakum: Thank you.

Trial Examiner Webb: The motion is granted. Anything else gentlemen? [1997]

Trial Examiner Webb: Now, in respect to the motion to dismiss the complaint, the written motion to dismiss the complaint, filed by the Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), ruling on which was deferred, I now deny the motion.

The same ruling applies to the written motion to dismiss, filed by The Times-Mirror Company. That motion also is denied. [2002]

Before the National Labor Relations Board
Twenty-first Region

Case No. XXI-C-1956

In the Matter of HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT)

and

LOS ANGELES NEWS BOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

Case No. XXI-C-1957

In the Matter of STOCKHOLDERS PUBLISHING COMPANY, INC.

and

LOS ANGELES NEWSBOYS LOCAL INDUSTRIAL UNION No. 75, C. I. O.

Room 808, United States Post Office and Court House Building,
Spring, Temple and Main Streets,
Los Angeles, California,

Tuesday, December 16, 1941.

The above-entitled matter came on for hearing, pursuant to notice, at 2:00 o'clock p. m.

Before THOMAS S. WILSON, Trial Examiner.

Appearances:

JAMES A. COBEY, Attorney for the National Labor Relations Board. [2006]

LAWLER, FELIX & HALL, By JOHN M. HALL, 700 Standard Oil Building, Los Angeles, California, appearing for Hearst Publications, Inc. (Los Angeles Examiner Department).

L. B. BINFORD, 1208 Hollingsworth Building, Los Angeles, California, appearing for Stockholders Publishing Company, Inc.

PAT COMORRE, Room 304, 212 West Third Street, Los Angeles, California, appearing for Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. [2007]

Mr. Binford: Do I understand that heretofore there has been a formal order entered into by the Board consolidating the two cases before the Examiner at this time?

Trial Examiner Wilson: You will have to ask Mr. Cobey that question. I think there is.

Mr. Cobey: Yes, there has been.

Mr. Binford: For the purpose of the record, I wish to object to such consolidation order upon the following grounds: one, that we had no notice of such cases being consolidated at any given time, and therefore were not afforded any previous [2012] opportunity of objecting to such consolidation order. The objection first goes to the fact that

throughout the hearings heretofore in connection with the Union's efforts to establish the Newsboys, as employees, at all times objections were made by both the Examiner's counsel and the Stockholders Publishing Company's counsel to any testimony that was introduced in the other case; and stipulations were, in the main, as the record will disclose, procured to the effect that such testimony would not be binding upon any of the other parties to the proceedings.

Secondly, we wish to object to the consolidation upon the ground that the record discloses that the method by which the distribution of papers, handled and sold by the Examiner, and the method by which the distribution of papers handled and sold by the Stockholders Publishing Company, are entirely different. The relationship between the Stockholders Publishing Company, as publisher of the Daily News, and the so-called district men, and in turn the newsboys themselves, is an entirely different relationship, and an entirely different situation, and entirely different mechanics are involved than that which is sustained between the Examiner and their distribution system.

Mr. Hall: I would like the record to show an objection on behalf of the Los Angeles Examiner to the consolidation, upon the same grounds and for the same reasons stated by Mr. [2013] Binford.

Trial Examiner Wilson: At this time the Examiner will have to overrule those objections. [2014]

Mr. Hall: Will it be stipulated that copies of

the answer of Los Angeles Examiner, and a copy of Los Angeles Examiner's motion to dismiss complaint was served upon Mr. Comorre, representing the Union, on December 15, 1941.

Mr. Comorre: I didn't get that.

Trial Examiner Wilson: Will you read it.

(The record was read.)

Mr. Comorre: That is right.

Mr. Hall: I take it, then, there will be no occasion, Mr. Cobey, to make a part of your records, the affidavit of service which I have here showing service upon the Union of those two documents.

Trial Examiner Wilson: You admit service upon you, don't you, Mr. Cobey?

Mr. Cobey: Yes. I think the admission referred to is an admission of service upon the Union.

Mr. Hall: That is correct.

Mr. Cobey: I think their admission on the record is sufficient. [2018]

Trial Examiner Wilson: Is there any objection to the introduction of Board's Exhibit 1?

Mr. Hall: No objection.

Mr. Binford: No objection.

Trial Examiner Wilson: It will be admitted.

(Thereupon, the documents referred to, heretofore marked for identification as Board's Exhibits Nos. 1-A-1, 1-A-2, 1-A-3, 1-A-4, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, and 1-I, were received in evidence.) [2019]

Mr. Binford: May I ask, Mr. Cobey, if it will be stipulated that Board's Exhibit 2-E and 2-F each

contain an appropriate affidavit of service on the Union.

Mr. Cobey: Yes, I am sorry I omitted that, Mr. Binford.

Mr. Binford: And also may I ask that it will be stipulated [2021] that the rights of the Stockholders Publishing Company shall not be prejudiced by reason of the originals being filed on the 16th in lieu of the 15th.

Mr. Cobey: No. I will so stipulate.

Trial Examiner Wilson: Board's Exhibit 2 will be admitted.

(Thereupon, the documents heretofore marked for identification as Board's Exhibits Nos. 2-A-1, 2-A-2, 2-A-3, 2-A-4, 2-B, 2-C, 2-D, 2-E, 2-F and 2-G, were received in evidence.)

Mr. Cobey: I would like to request at this time from Mr. [2022] Hall and Mr. Binford a statement to the effect that on behalf of their clients that they have no objection on the score of adequate notice of these proceedings.

Mr. Hall: I will so stipulate.

Mr. Binford: I will so stipulate. [2023]

Trial Examiner Wilson: It will be understood that the objection will be overruled and Exhibit 3 will be admitted.

(Thereupon, the documents heretofore marked for identification as Board's Exhibit Nos. 3, 3-A, 3-B, 3-C, 3-D, 3-E, 3-F, 3-G, 3-H, and 3-I, were received in evidence.)

Mr. Cobey: Mr. Examiner, I should like to offer at this time to be marked as Board's Exhibit 4 for identification, an original and one copy of a document captioned "In the Matter of Hearst Publications, Inc. (Los Angeles Examiner Department) and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., Case No. XXI-C-1956. Stipulation."

This document is dated December 15, 1941, and it is signed by John M. Hall on behalf of the Examiner; Pat Comorre on behalf of the Union; and myself on behalf of the Board.

(Thereupon, the document referred to was marked as Board's Exhibit No. 4, for identification.)

Trial Examiner Wilson: I suspect there is no objection.

Mr. Hall: No objection. [2027]

Trial Examiner Wilson: It will be admitted.

(Thereupon, the document heretofore marked for identification as Board's Exhibit No. 4, was received in evidence.) [Exhibit No. 4 is set out at page 280 of this printed record].

Trial Examiner Wilson: May I see that?

Mr. Cobey: Certainly.

I should like to offer to be marked for identification as Board's Exhibit 5, the document captioned "In the Matter of Stockholders Publishing Company, Inc. and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., case number XXI-C-1957. Stipulation."

This document is dated December 11, 1941, and is signed by L. B. Binford and Howard M. Binford on behalf of the News; Pat Comorre on behalf of the Union; and myself on behalf of the Board. I am offering an original and one copy, and the original bears an affidavit of service by mail upon the Union.

(Thereupon, the document referred to was marked as Board's Exhibit No. 5, for identification.) [2028]

Trial Examiner Wilson: I see. I will overrule the objection at this time and allow the document in evidence.

(Thereupon, the document heretofore marked for identification as Board's Exhibit No. 5, was received in evidence.) [2029]

PATRICK COMORRE

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Wilson: Will you state your full name?

The Witness: Patrick Comorre, 1808 Kemper Street, Los Angeles, California.

Direct Examination

Q. (By Mr. Cobey) What is your present occupation, Mr. Comorre?

(Testimony of Patrick Comorre.)

A. Secretary of the Newsboys Union.

Mr. Cobey: Might it be stipulated that when Mr. Comorre refers to the Newsboys Union, he is referring to the union that is a party to these proceedings.

Mr. Hall: So stipulated.

Mr. Binford: So stipulated.

Q. (By Mr. Cobey) Mr. Comorre, will you state whether or not at the present time you hold any office in the union?

A. I do. I am secretary of the Newsboys Union.

Q. How long have you held that office?

A. Since September, 1940.

Q. Prior to September, 1940, did you or did you not hold any office in the union?

A. Yes, I did. I was the organizer of the Newsboys Union. [2030]

Mr. Cobey: Will it be stipulated that the hearing in the consolidated representation proceedings, that is, cases numbers R-1923 to 1926, inclusive, took place from June 10, to June 27, 1940?

Mr. Binford: If you made that statement as a fact it will be so stipulated.

Mr. Cobey: I make such a statement.

Mr. Hall: I will make such a stipulation.

Mr. Binford: Yes.

The Witness: May I make one correction on that? I was the chairman of the Labor Board Committee that was handling Labor Board cases at that time.

(Testimony of Patrick Comorre.)

Trial Examiner Wilson: Chairman of what?

The Witness: Chairman of the Labor Board Committee that was handling Labor Board cases. I was the chairman on the Labor Board Committee of the Newsboys Union.

Trial Examiner Wilson: I understand.

Q. (By Mr. Cobey) Then as I understand it, Mr. Comorre, at the time of this representation hearing, the one from June 10, to June 27, 1940, you were chairman of a committee for your union, which was representing your union at that hearing.

A. That is right.

Q. All right. Now, I think you stated that in September of 1940 you became secretary of the union? A. That is right. [2031]

Q. Now, between the date of the aforementioned hearing, that is, June 10 to June 27, 1940, and September, 1940, did you or did you not hold any office in the Union?

A. Yes, I did. I was chairman of what we called the Legal Committee, that was representing the union in the Labor Board cases.

Q. Will you state whether or not you were the chairman of that committee or its secretary?

A. I believe I was the secretary. That is right. I was the secretary. Mr. Ely was the chairman of the committee.

Q. Mr. Comorre, would you state whether or not you have been connected with the union since its inception?

(Testimony of Patrick Comorre.)

A. Well, not immediately when it was started but——

Q. When did you first become connected with it?

A. 1938, in July.

Q. When was the first time that you became an officer of the union?

A. Around July of 1938, I believe that is correct.

Q. What position did you hold at that time?

A. I was an organizer for the Newsboys Union.

Q. How long did you hold that position?

A. About a year.

Q. In other words, until about July, 1939?

A. September, 1939.

Q. September, 1939? [2032]

A. Yes, that is correct.

Q. Can you tell us whether or not between September, 1939, and June, 1940, you held any office in the union?

A. No. I was a member of the union but I didn't hold any office at that time.

Q. You didn't hold office? A. No.

Q. But in June, 1940, you became secretary of the Committee representing the Union in Labor Board cases?

A. In May, 1940. That is right.

Q. So aside from a period between September, 1939, to May of 1940, at all other times since July,

(Testimony of Patrick Comorre.)

1938, you have been an officer of the Union?

A. That is correct.

(Testimony of Patrick Comorre.)

Q. In your capacity as an officer of the Union during the period prior to June, 1940, with the exception of the period from September, 1839, to May of 1940, you were familiar with the functions and general operations of the organization, were you not?

A. Yes, I was.

Q. As a matter of fact, in the period between September, '39, and May of 1940 you were a member of the Union, were you not? A. Yes, I was.

Q. Did you attend meetings? [2033]

A. Yes.

Q. Did you attend meetings regularly or not?

A. Well, with the exception of a couple of months, regularly.

Q. You were present throughout that entire hearing, were you not? A. I was.

Q. As a matter of fact, you testified as to the functioning of the Union in that entire hearing, did you not? A. That is correct.

Q. Will you state whether or not there has been any change in its functioning, in its general operation, since the prior hearing?

A. No major change, maybe a few minor, new officers, or stuff like that from time to time. They elect new officers every year. The officers would vary a little in some cases.

Q. Since that prior hearing, the Union has been holding regular meetings, has it not?

A. That is right.

Q. And it is collecting dues regularly from its membership? A. That is correct.

(Testimony of Patrick Comorre.)

Q. Can you state whether or not the Union has been attempting to act as bargaining representative for its members. A. We have.

Q. With the various publishers, the local publishers? A. Yes, we have. [2034]

Q. Mr. Comorre, can you state whether or not your organization at the present time is affiliated with any national labor organization?

A. Yes. We are affiliated with the national C. I. O.

Q. How long has your organization been affiliated with the C. I. O.?

A. Well, we have been affiliated with the C. I. O. since May, 1937.

Q. May, 1937? A. That is right.

Q. At that time it was the Committee for Industrial Organization?

A. That is correct. It was still C. I. O., but the Committee for Industrial Organization.

Q. Subsequently, when it became the Congress of Industrial Organizations, your organization remained affiliated? A. That is right.

Q. And it is so affiliated today?

A. That is correct.

Q. Since the prior hearing, can you state whether or not your organization has attempted to adjust grievances of the members with the local publishers? And I might state I refer specifically to the respondents in this case.

A. Did you say "prior"?

(Testimony of Patrick Comorre.)

Q. No, I say "subsequent" to the prior hearing. In other [2035] words, subsequent to June, 1940, has your organization, or has it not attempted to adjust grievances of its members with the respondents in this case? A. We have, yes.

Mr. Binford: Isn't that covered by stipulation, Mr. Cobey?

Mr. Cobey: I think the details are, yes.

That is all. [2036]

Mr. Cobey: Mr. Examiner, I would like to request leave for the Board to reopen this case for this limited purpose: I call your attention to the fact that in Board's Exhibit 4, which relates to The Examiner, the last sentence in paragraph 3 reads, "accordingly there has been no bargaining between respondent and the union." Inadvertently, such a sentence was omitted from Board's Exhibit 5, which is a stipulation which relates to The News, and I was wondering whether counsel for the News would be willing to make such a statement on the record.

Mr. Binford: Will you refer, Mr. Cobey, to the exact point in the stipulation in which you would like to have it amended. [2038]

Mr. Cobey That sentence would appear at the conclusion of paragraph 3, of Board's Exhibit 5.

Mr. Binford; The clause that you wish to have included in this stipulation would immediately follow the last word "certification," at the end of paragraph 3, of Board's Exhibit 5?

Mr. Cobey: Yes, and would read, "accordingly, there has been no bargaining between respondent and the union."

Mr. Binford: That is agreeable. [2039]

Mr. Hall: Will it be stipulated by the Board, and the representative of the Union present, that at no time have persons representing the Los Angeles Examiner dealt with this union, as a representative of respondent's employees, and by "union" I am, of course, referring to Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.

Mr. Cobey: The Board will so stipulate?

Mr. Comorre: Yes.

Mr. Binford: May the same stipulation be entered into on behalf of the Stockholders Publishing Company, Inc., publishers of The Daily News?

Mr. Cobey: That is agreeable to the Board.

Mr. Commore: That is agreeable to the Union.

Trial Examiner Wilson: Off the record.

(There was a discussion off the record.)

Trial Examiner Wilson: All right, on the record. Proceed.

Mr. Hall: I would like to be marked, as Los Angeles Examiner's Exhibit No. 1, for identification, two copies of findings and award of the Industrial Accident Commission of the State of California in the proceeding entitled "Abe Goren [2040] versus Hearst Publications, Inc., et al.," being No. L. A. 53-671. These copies that I now ask to have marked being both certified by the Industrial Accident Commission of California.

Trial Examiner Wilson: Any objection?

Mr. Hall: And I hand them to counsel for the Board and representative of the Union.

(Thereupon, the document referred to was marked as Los Angeles Examiner's Exhibit No. 1, for identification.

Trial Examiner Wilson: Any objection?

Mr. Cobey: Mr. Examiner——

Mr. Hall: Pardon me. To make the record clear I now offer in evidence the document, which I understand has just been marked Los Angeles Examiner's Exhibit No. 1.

Mr. Cobey: Mr. Examiner, I would like to object to the admission of Examiner's Exhibit No. 1 in evidence on the ground that it is irrelevant and immaterial to the issues of this proceeding. You understand I make no objection on the score of authenticity; it is simply on the ground of relevancy that a determining made in the Industrial Accident Commission that a news vendor is not an employee within the meaning of the compensation laws of the State of California has no bearing upon the issue as to whether or not these same news vendors are employees within the meaning of the [2041] National Labor Relations Act.

I would also like to state that from an inspection of the proffered exhibit, it does not disclose the fact that the plaintiff in the case was engaged in the distribution of The Examiner, since the case is merely brought against the Hearst Publications, and I do not know whether this particular indi-

vidual was engaged in the distribution of the Herald or of the Examiner.

Trial Examiner Wilson: What do you claim for this, Mr. Hall?

Mr. Hall: I might suggest this, Mr. Examiner, that responsive to the last part of the objection of counsel for the Board, I would ask to have another document marked in this connection and then possibly that will obviate his objection.

I now ask to have marked for identification as Los Angeles Examiner's Exhibit No. 2, in duplicate, transcripts of the testimony in the proceeding before the Industrial Accident Commission of the State of California to which I referred in connection with Los Angeles Exhibit No. 1, namely, in connection with Case No. L. A. 53-671, one entitled "Abe Goren versus Hearst Publications, Inc., et al.," both copies of this transcript, which I now offer, to be marked in this manner, have been certified by the Industrial Accident Commission of California. And I now exhibit that to counsel [2042] for the Board and to the representatives of the Union.

(Thereupon, the document referred to was marked as Los Angeles Examiner's Exhibit No. 2, for identification.)

Mr. Cobey: Mr. Examiner——

Mr. Hall: And I also ask that upon their being examined that they be offered in evidence under the numbers given.

Mr. Cobey: Mr. Examiner, I make the same

objection, as previously stated, to Examiner's Exhibit 2 for identification, and I would like to point out that this decision and award, and the testimony taken, could have no bearing upon the issues of this case because it is merely a matter of local and state law, while in the instant case we are dealing with a piece of federal legislation; and the purpose of Congress in making such legislation was to insure uniform interpretation, and if the interpretation is to be controlled in whole, or in part, by interpretations of the various state courts, or state tribunals, that uniform interpretation could not be realized. So I make my same objection to the admission of Los Angeles Examiner's Exhibit 2, for identification, as I previously stated to the admission of Examiner's Exhibit 1.

Trial Examiner Wilson: You are willing to admit the authenticity of all the papers?

Mr. Cobey: Yes, that is right. They are what they purport to be. [2043]

Trial Examiner Wilson: All right.

At this time the Examiner will sustain the objection and suggests to Mr. Hall that in the event the Examiner is wrong in his ruling that Examiner's Exhibits 1 and 2 be placed in the file, called the rejected exhibit file, so that if the Examiner is wrong the Board can reverse me on this and admit the documents in evidence. [2044]

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10112

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT),

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 10114

STOCKHOLDERS PUBLISHING COMPANY, INC.

Petitioner;

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 10115

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT),

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 10123

THE TIMES-MIRROR COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board, Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in proceedings had before said Board entitled, "In the Matter of Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O." and "In the Matter of The Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.," and "In the Matter of Hearst Publications, Incorporated (Los Angeles Examiner Department) and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O.," and "In the Matter of Stockholders Publishing Company, Inc., and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., the same being, respectively, Cases Nos. C-2023, C-2024, C-2050, and C-2051 before said

Board, such transcript including the pleadings, testimony and evidence upon which the orders of the Board in said proceedings were entered, and including also the findings and orders of the Board.

Fully enumerated, said documents attached hereto are as follows:

Cases Nos. R-1923 (XXI-R-927), R-1924 (XXI-R-928), R-1925 (XXI-R-1062), R-1926 (XXI-R-1084)

(1) Stenographic transcript of testimony before Thomas H. Kennedy, Trial Examiner for the National Labor Relations Board on June 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26 and 27, 1940, together with all exhibits introduced in evidence.

(2) Copy of respondent Stockholders' (R-1923) request for permission to file brief, dated June 27, 1940.

(3) Copy of respondent Times' (R-1925) request for permission to file brief, dated June 27, 1940.

(4) Copy of respondent Hearst's (R-1926) request for permission to file brief, dated June 27, 1940.

(5) Copy of respondent Hearst's (R-1924) request for permission to file brief, dated June 28, 1940.

(6) Copy of letter, dated June 29, 1940, granting all parties permission to file brief.

(7) Copy of stipulation, dated October 1, 1940,

providing for correction of transcript of testimony.

(8) Copy of order, dated October 4, 1940, making above stipulation a part of the record.

(9) Copy of decision, findings of fact, conclusions of law and direction of elections, issued by the National Labor Relations Board January 9, 1941, together with affidavit of service thereof.

(10) Copy of amendment to decision and direction of elections issued by the National Labor Relations Board January 18, 1941, together with affidavit of service thereof.

(11) Copy of second amendment to direction of elections issued by the National Labor Relations Board January 31, 1941, together with affidavit of service thereof.

(12) Copy of respondent Stockholders' (R-1923) motion to reopen proceedings (and for modification of decision), dated March 13, 1941.

(13) Copy of respondent Hearst's (R-1924) motion to reopen decision and direction of elections and for modification thereof, dated March 13, 1941.

(14) Copy of order, dated March 21, 1941, denying motion of respondent Stockholders (R. 1923).

(15) Copy of third amendment to direction of elections issued by National Lab Relations Board, March 29, 1941, together with affidavit of service thereof.

(16) Copy of stipulation, dated March 29, 1941, providing for further amendment to the Board's decision and direction of elections.

(17) Copy of fourth amendment to decision

and direction of elections issued by the National Labor Relations Board, April 12, 1941, pursuant to stipulation of parties, together with affidavit of service thereof.

(18) Copy of fifth amendment to direction of elections issued by the National Labor Relations Board, May 9, 1941, together with affidavit of service thereof.

(19) Copy of respondent Stockholders' (R-1923) letter, dated May 12, 1941, challenging scheduled election of its employees.

(20) Copy of respondent Times' (R-1925) objections to validity of direction of elections and exceptions to the same, dated May 9, 1941.

(21) Copy of respondent Hearst's (R-1926) objections to validity of direction of elections and exceptions to the same, dated May 13, 1941.

(22) Copy of respondent Hearst's (R-1924) challenges of scheduled election of its employees, May 14, 1941.

(23) Copy of Regional Director's election report (R-1923), dated May 17, 1941.

(24) Copy of Regional Director's election report (R-1924), dated May 17, 1941.

(25) Copy of order dated May 21, 1941, overruling respondent Times' (R-1925) objections to validity of direction of elections and exceptions to the same.

(26) Copy of respondent Stockholders' (R-1923) objections to election report and the conduct of same, dated May 23, 1941.

(27) Copy of respondent Hearst's (R-1924) objections, dated May 23, 1941, to conduct of the ballot and to the election report.

(28) Copy of order, dated May 26, 1941, overruling respondent Hearst's (R-1926) objections to validity of direction of elections and exceptions to same.

(29) Copy of Regional Director's report, dated May 26, 1941, on objections of respondent Stockholders (R-1923) to the election report.

(30) Copy of Regional Director's report, dated May 26, 1941, on objections of respondent Hearst (R-1924) to the election report.

(31) Copy of Regional Director's election report (R-1925), dated June 2, 1941.

(32) Copy of respondent Times' R-1925 objections to the conduct of the ballot and to the election report, sworn to June 6, 1941.

(33) Copy of Regional Director's report, dated June 12, 1941, on objections of respondent Times (R-1925) to the election report.

(34) Copy of supplemental decision and certification of representatives issued by the National Labor Relations Board, July 30, 1941, together with affidavit of service thereof.

(35) Copy of Regional Director's election report (R-1926), dated August 29, 1941.

(36) Copy of respondent Hearst's (R-1926) objections, dated September 5, 1941, to the conduct of the ballot and to the election report.

(37) Copy of Regional Director's report dated

September 8, 1941, on objections of respondent Hearst (R-1926) to the election report.

(38) Copy of supplemental decision and direction (R-1926) issued by the National Labor Relations Board, September 26, 1941, together with affidavit of service thereof.

(39) Copy of Regional Director's supplemental election report (R-1926), dated October 3, 1941, issued pursuant to Board's supplemental decision and direction of September 26, 1941.

(40) Copy of letter dated October 9, 1941, advising of no objections filed to supplemental election report.

(41) Copy of certification of representatives (R-1926) issued by the National Labor Relations Board October 20, 1941, together with affidavit of service thereof.

Cases No. C-2023 (XXI-C-1840)
and C-2024 (XXI-C-1843)

(42) Charge filed by the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., sworn to August 28, 1941, in case XXI-C-1840 (C-2023).

(43) Charge filed by Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., sworn to September 3, 1941, in case XXI-C-1843 (C-2024).

(44) Certified copy of order consolidating cases Nos. XXI-C-1840 (C-2023) and XXI-C-1843 (C-2024), dated October 23, 1941.

(45) Complaint and notice of hearing issued by the National Labor Relations Board October 25, 1941, in case XXI-C-1840 (C-2023).

(46) Complaint and notice of hearing issued by the National Labor Relations Board October 25, 1941, in case XXI-C-1843 (C-2024).

(47) Respondent Times' answer to complaint, sworn to November 3, 1941, case XXI-C-1843 (C-2024).

(48) Respondent Times' motion to dismiss, dated November 4, 1941, case XXI-C-1843 (C-2024).

(49) Certified copy of order designating W. P. Webb, Trial Examiner (Cases XXI-C-1840 (C-2023) and XXI-C-1843) (C-2024) dated November 6, 1941.

(50) Respondent Hearst's motion to dismiss, dated November 7, 1941, case XXI-C-1840 (C-2023).

(51) Respondent Hearst's answer to complaint, sworn to November 7, 1941, case XXI-C-1840 (C-2023).

Documents listed hereinabove, under items 42 to 51, inclusive, are contained in the exhibits and included under the following item:

(52) Stenographic transcript of testimony before W. P. Webb, Trial Examiner for the National Labor Relations Board on November 10 and 12, 1941, together with all exhibits introduced in evidence.

(53) Copy of stipulation, dated November 21, 1941, providing for correction of the stenographic transcript of record.

(54) Copy of order directing correction of stenographic transcript of record issued by Trial Examiner Webb, November 21, 1941.

(55) Copy of Intermediate Report of Trial Examiner Webb, dated December 4, 1941.

(56) Copy of order transferring case to the National Labor Relations Board, dated December 6, 1941, together with annexed notice.

(57) Copy of respondent Times' (C-2024) request for permission to present oral argument, dated December 13, 1941.

(58) Copy of respondent Hearst's (C-2023) request for permission to present oral argument, dated December 20, 1941.

(59) Copy of notice of hearing for purpose of oral argument dated December 26, 1941.

(60) Copy of respondent Times' (C-2024) exceptions to the Intermediate Report, dated December 31, 1942.

(61) Copy of respondent Hearst's (C-2023) exceptions to the Intermediate Report, dated January 2, 1942.

(62) Copy of list of appearances at oral argument held before the Board, January 22, 1942.

(63) Copy of decision, findings of fact, conclusions of law and orders, issued by the National Labor Relations Board, March 30, 1942, together with affidavit of service and United States Post Office return receipts thereof.

Cases Nos. C-2050 (XXI-C-1956)
and C-2051 (XXI-C-1957)

(64) Charge filed by the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., sworn to

November 21, 1941, in case XXI-C-1956 (C-2050).

(65) Charge filed by the Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., sworn to November 21, 1941, in case XXI-C-1957 (C-2051).

(66) Complaint and notice of hearing issued by the National Labor Relations Board, December 5, 1941, case XXI-C-1956 (C-2050).

(67) Complaint and notice of hearing issued by the National Labor Relations Board, December 5, 1941, case XXI-C-1957 (C-2051).

(68) Certified copy of order consolidating cases Nos. XXI-C-1956 (C-2050) and XXI-C-1957 (C-2051), dated December 3, 1941.

(69) Certified copy of order designating Thomas S. Wilson, Trial Examiner, dated December 10, 1941.

(70) Respondent Stockholders' motion to dismiss complaint, dated December 11, 1941, case XXI-C-1957 (C-2051).

(71) Respondent Stockholders' answer to complaint, sworn to December 11, 1941, case XXI-C-1957 (C-2051).

(72) Respondent Hearst's motion to dismiss complaint, dated December 12, 1941, case XXI-C-1956 (C-2050).

(73) Respondent Hearst's answer to complaint, sworn to December 12, 1941, case XXI-C-1956 (C-2050).

(74) Order postponing hearing, dated December 15, 1941.

Documents listed hereinabove, under items 64

to 74, inclusive, are contained in the exhibits and included under the following item:

(75) Stenographic transcript of testimony before Thomas S. Wilson, Trial Examiner for the National Labor Relations Board on December 16, 1941, together with all exhibits introduced in evidence.

(76) Copy of Trial Examiner Wilson's Intermediate Report, dated January 7, 1942.

(77) Copy of order transferring case to National Labor Relations Board, dated January 10, 1942, together with annexed notice.

(78) Copy of respondent Stockholders' (C-2051) request for permission to present oral argument, dated January 20, 1942.

(79) Copy of respondent Hearst's (C-2050) request for permission to present oral argument, dated January 22, 1942.

(80) Copy of notice of hearing for purpose of oral argument, dated January 27, 1942.

(81) Copy of respondent Hearst's (C-2050) exceptions to the Intermediate Report, dated January 28, 1942.

(82) Copy of respondent Stockholders' (C-2051) exceptions to the Intermediate Report, dated February 4, 1942.

(83) Copy of list of appearances at oral argument held before the Board on February 19, 1942.

(84) Copy of decision, findings of fact, conclusions of law and orders issued by the National Labor Relations Board March 30, 1942, together with

affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set her hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 5th day of June 1942.

[Seal] BEATRICE M. STERN
Executive Secretary
NATIONAL LABOR
RELATIONS BOARD

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. No. 10112. Hearst Publications, Incorporated, Petitioner, vs. National Labor Relations Board, Respondent. No. 10114. Stockholders Publishing Company, Inc., Petitioner, vs. National Labor Relations Board, Respondent. No. 10115. Hearst Publications, Incorporated, Petitioner, vs. National Labor Relations Board, Respondent. No. 10123. The Times-Mirror Company, a corporation, Petitioner, vs. National Labor Relations Board, Respondent. Transcript of Record. Upon Petitions for Review and Enforcement of Orders of the National Labor Relations Board.

Filed June 10, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10112

HEARST PUBLICATIONS, INCORPORATED,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR REVIEW OF FINAL ORDER OF NATIONAL LABOR RELATIONS BOARD.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit.

Comes now Hearst Publications, Incorporated, a California corporation, a party aggrieved by a final order of the National Labor Relations Board, and files this its petition, pursuant to the provisions of section 10(f) of the Act of Congress of July 5, 1935 (49 Stat. 449), known and cited as the National Labor Relations Act, for the review of the decision and final order of the National Labor Relations Board, dated March 30, 1942, directing that petitioner cease and desist from certain practices, denominated by said Board as "unfair labor practices." The proceeding resulting in said order is entitled upon the Board's records "In the Matter of Hearst Publications, Incorporated (Los Angeles Examiner Department) and Los Angeles Newsboys

Local Industrial Union No. 75, C.I.O., Case No. C-2050," and this case before the Board was consolidated with Case No. C-2051. In support of this petition, this petitioner respectfully shows:

1. Petitioner is and at all times herein referred to was a California corporation engaged in business in the State of California, within this judicial circuit. Petitioner maintains and at all of said times has maintained an office and places of business within the State of California. Petitioner has continuously for many years maintained and operated as a separate and distinct enterprise and department of its business a newspaper printing and publishing plant at Los Agenles, California, known as "Los Angeles Examiner Department," at which plant it prints a daily and Sunday newspaper, known as "Los Angeles Examiner," and sometimes in the proceedings before the Board referred to as the "Examiner." A part of each issue of such newspaper is sold to newsboys who in turn resell the same to retail purchasers on the streets of the City of Los Angeles. Petitioner in connection with its said Los Angeles Examiner Department has an investment in plant and equipment and in press franchises, circulation and good will of a value amounting to many hundreds of thousands of dollars.

2. Respondent, National Labor Relations Board, herein referred to as the "Board," is an agency of the government of the United States of America, created pursuant to the Act of Congress of July 5, 1935 (49 Stat. 449), known and cited as the National

Labor Relations Act. The duly appointed, qualified and acting members of said Board are now Messrs. Harry A. Millis, Wm. M. Leiserson and Gerard D. Reilly. Said Board at all times herein referred to had an office and a Regional Director for the Twenty-first Region at Los Angeles, California, within this judicial circuit and within the jurisdiction of this Court. As will hereinafter more fully appear, all of the so-called unfair labor practices in which in this proceeding it is alleged that petitioner engaged occurred at Los Angeles, California, within this judicial circuit and within the jurisdiction of this Court. This Court has jurisdiction of this petition by virtue of section 10(f) of the National Labor Relations Act.

3. On or about May 18, 1940, Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., herein referred to as the "Union," filed with the Board's Regional Director for the Twenty-first Region at Los Angeles, California, a petition for investigation and certification of representatives pursuant to section 9(c) of the National Labor Relations Act. By such petition the Union alleged that this petitioner was an employer engaged in newspaper publishing; that certain newsboys engaged in the street sale of petitioner's newspaper at established spots and corners within the City of Los Angeles, California, constituted an appropriate bargaining unit; that newsboys within such unit were employees of petitioner; that a majority of such employees had designated or selected the Union to be their representative for col-

lective bargaining; that a question had arisen concerning the representation of such employees in such bargaining unit; and that such question was one affecting commerce within the meaning of the National Labor Relations Act. By such petition the Union requested that the Board investigate such controversy and certify to the parties the name or names of the representatives that had been designated or selected by such newsboys. At the subsequent hearing, on or about June 22, 1940, the Union amended said petition with respect to the allegations therein concerning an appropriate unit and such amendment was granted by the National Labor Relations Board by its decision and direction of elections, dated January 9, 1941, hereinafter referred to. Such amendment described the unit alleged to be the appropriate bargaining unit as "all newsboys engaged in the street sale of the Los Angeles Examiner at established spots 4 or more hours per day, 5 or more days per week, within the City of Los Angeles, California, except temporary newsboys"; and "established spot" was defined by said amendment as "a place where a newsboy has engaged in the street sale of the Los Angeles Examiner 5 or more days a week for a period of 6 consecutive months or more," and a "temporary newsboy" was defined by said amendment as "a newsboy who has been engaged in the street sale of the Los Angeles Examiner at an established spot for 30 days or less." This proceeding before the Board was known as Case No. R-1926.*

*This case was first known as Case No. XXI-R-1084.

Orders of the Board entered March 27, 1940, and June 5, 1940, directed that said Case No. R-1926 be consolidated with three other cases known before said Board as Cases Nos. R-1923, R-1924 and R-1925, involving said Union and Stockholders Publishing Company, Inc., Hearst Publications, Incorporated (Los Angeles Evening Herald & Express Department), and Times-Mirror Co., respectively.

4. On or about June 10, 1940, this petitioner duly served and filed its written answer to said petition for investigation and certification, denying that it was an employer of the persons claimed to be represented by the Union; denying that the alleged bargaining unit was the appropriate bargaining unit; denying that the alleged unit included any of petitioner's employees; denying that the Union had been designated or selected as a representative for purposes of collective bargaining by such alleged unit; denying that the Union represented a majority or any substantial fractional part of the newsboys engaged in the street sale of the Los Angeles Examiner within Los Angeles, California; and denying that any question concerning the representation of such newsboys was a question affecting commerce within the meaning of the National Labor Relations Act. At the same time petitioner duly served and filed its written motion to dismiss such petition for investigation and certification. Petitioner's said motion to dismiss was denied by the Board's decision and direction of elections, dated January 9, 1941, hereinafter referred to. A hearing was held at Los Angeles,

California, before the Board's Trial Examiner upon the petitions and answers in these consolidated cases. Such hearing commenced on or about June 10, 1940, and continued to on or about June 27, 1940. At such hearing the Trial Examiner granted petitioner's application to have its answer and motion to dismiss stand to the petition as the latter was amended at said hearing in the respects stated in paragraph 3 hereof.

5. By its decision and direction of elections in said consolidated cases, dated January 9, 1941, the Board directed that elections be conducted among newsboys engaged in the street sale of the newspapers published by the companies involved. It was thereby directed that an election be held among all newsboys engaged in the street sale of petitioner's newspaper at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys, to determine whether such newsboys desired to be represented by the Union for purposes of collective bargaining. This decision and direction of elections was subsequently amended, but no such amendment altered this description of the group of newsboys engaged in the street sale of petitioner's newspaper within which such election was to be conducted.

6. Thereafter and prior to any election it was agreed between a representative of the Board and this petitioner that the participation of this petitioner in any discussion relative to the conduct of such election should not be deemed acquiescence by

this petitioner in the correctness of the ruling of the Board on January 9, 1941, directing the holding of such election, nor be deemed a waiver of petitioner's contention that the Board had no jurisdiction over it with respect to the subject-matter of such controversy. Also, prior to any election, and on or about May 13, 1941, petitioner duly served and filed its written "Objections to Validity of Direction of Elections and Exceptions to the Same: Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Los Angeles Examiner Unit)." By order of the Board, dated May 26, 1941, these objections were overruled. On or about May 15, 1941, an election was conducted under the direction and supervision of the Board's Regional Director for the Twenty-first Region among newsboys engaged in the street sale of petitioner's newspaper within said group, and such Regional Director thereafter made and filed his report with reference to such election. On or about September 5, 1941, petitioner duly served and filed its written "Objections to the Conduct of the Ballot and to the Election Report." These objections were overruled by the Board in its Supplemental Decision and Direction, dated September 26, 1941.

7. The Board, by its certification of representatives, dated October 20, 1941, certified that as a result of said election the Union had been designated and selected by a majority "of all employees" of this petitioner "who are newsboys engaged in the street sale of the Examiner at established spots 4 or more

hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, as their representative for the purposes of collective bargaining" and that the Union was the exclusive representative "of all such employees" for the purposes of collective bargaining. The proceedings before the Board referred to in this and preceding paragraphs will be herein referred to as the "representation proceedings."

8. On or about December 5, 1941, the Board issued its complaint against petitioner, alleging, among other things, that the Union was a labor organization within the meaning of the National Labor Relations Act; that a unit for the purposes of collective bargaining composed of newsboys engaged in the street sale of petitioner's newspaper at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, would be composed of employees of petitioner and would insure to such employees the full benefit of their right to self-organization and collective bargaining, and that such unit was appropriate for the purposes of collective bargaining; that by May 15, 1941, or before that date, a majority of the employees of this petitioner within such unit had designated the Union as their representative for the purposes of bargaining collectively with petitioner and that this majority status of the Union within such unit had continued up to and including the date of such complaint; that petitioner had continuously failed and refused to bar-

gain collectively in good faith with the Union; that by such failure and refusal petitioner had engaged in and was engaging in unfair labor practices within the meaning of the National Labor Relations Act; that the acts of petitioner in connection with the operation of its business had a close, intimate and substantial relation to trade, traffic and commerce among the several states and tended to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce; and that the acts of petitioner constituted unfair labor practices affecting commerce and the free flow of commerce within the meaning of section 8, subsections (1) and (5) and section 2, subsections (6) and (7) of the National Labor Relations Act. This proceeding before the Board was known as Case No. C-2050,* and by order of the Board, dated December 3, 1941, was consolidated with Case No. C-2051 involving the Union and Stockholders Publishing Company, Inc.

9. On or about December 15, 1941, this petitioner duly served and filed its written answer to said complaint wherein, among other matters, it denied the allegations of said complaint hereinbefore referred to, except that it admitted that it had refused to bargain collectively with the Union and alleged that such refusal was in good faith and upon the advice of competent counsel and in the bona fide belief that the Board had no jurisdiction over petitioner

*This case was first known as case No. XXI-C-1956.

with respect to petitioner's relationship with the newsboys referred to in the complaint, who were independent contractors and not employees. By such answer petitioner also affirmatively alleged that the Board had no jurisdiction over petitioner; that petitioner was not engaged in interstate or foreign commerce; that no member of the Union was an employee of petitioner; that the persons within the alleged bargaining unit were not petitioner's employees; that the newsboys referred to in the complaint were engaged solely in intrastate commerce and were not engaged in interstate commerce or in any business activity having a close, intimate, substantial or any relation to trade, traffic or commerce among the several states or the territories of the United States and foreign countries; that no refusal of petitioner to bargain with the Union could burden or obstruct commerce or lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce; that no cessation of the news-vending activities of the members of the Union or the newsboys referred to in the complaint would burden or obstruct commerce or the free flow of commerce, or lead or tend to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce; that all of the newsboys referred to in the complaint were independent contractors over whose relations with petitioner the Board had no jurisdiction; and that the Industrial Accident Commission of the State of California, in a decision rendered on August

26, 1941, had ruled that a newsboy engaged in the street sale of petitioner's newspaper at an established spot 4 or more hours a day, 5 or more days a week, within Los Angeles, California, was not an employee of petitioner but was, on the contrary, an independent contractor.

10. On or about December 15, 1941, this petitioner duly served and filed its written motion to dismiss said complaint, urging therein as grounds therefor the matters to which reference is made in paragraph 9 herein. At the subsequent hearing upon said complaint such motion was denied by the Board's Trial Examiner.

11. On December 16, 1941, a hearing was held at Los Angeles, California, before the Board's Trial Examiner upon said complaint and answer, as well as upon the complaint and answer in said Case No. C-2051. At such hearing a written stipulation was made by representatives of this petitioner, the Union and the Board, and offered in evidence by the Board's attorney and received in evidence, by which it was agreed that there had been no material change in the conduct of the business of petitioner since the hearing in the representation proceedings in June, 1940, and that, if all witnesses called by the Union, the Board and petitioner at such representation hearing were called to testify in this complaint proceeding, their testimony would be substantially the same as their testimony given at such hearing in the representation proceedings, provided that this should not be

deemed to constitute an admission by petitioner that such testimony was sufficient to support a finding of fact or conclusion of law that the members of the Union or any of them were employees of petitioner, or constitute a waiver by petitioner of its right to contend that the evidence taken at the hearing in the representation proceedings was insufficient to show that any of the members of the Union or any of the persons within the unit which had been held by the Board to be appropriate was an employee of petitioner, or a waiver of petitioner's right to contend on all or any of the grounds urged before, at, or after said hearing in the representation proceedings, or on all or any of the grounds urged in petitioner's motion to dismiss the complaint in said Case No. C-2050, that the Board had no jurisdiction over petitioner, and that petitioner by entering into such stipulation did not admit, consent or agree that any of the members of the Union was an employee of petitioner within the purview of the National Labor Relations Act, and did not thereby or at all consent to or subject itself to the jurisdiction of the Board, and did not waive any of the grounds of objection theretofore asserted and maintained in the representation proceedings and by its answer and motion to dismiss in said Case No. C-2050.

12. Thereafter such Trial Examiner issued his intermediate report, dated January 7, 1942, finding that this petitioner had engaged in and was engaging in unfair labor practices affecting com-

merce within the meaning of section 8, subsections (1) and (5), and section 2, subsections (6) and (7) of the National Labor Relations Act, and recommending that this petitioner cease and desist from such unfair labor practices, and upon request, bargain collectively with the Union. On February 2, 1942, this petitioner duly served and filed with the Board written exceptions to such intermediate report and a brief in support of such exceptions. On February 19, 1942, a hearing for the purpose of oral argument was held before the Board at Washington, D. C.

13. Thereafter the Board issued its decision and order, dated March 30, 1942. This order is now a final order of the Board. This order, upon the basis of certain findings of fact and conclusions of law, directs that petitioner shall cease and desist from:

(a) Refusing to bargain collectively with the Union as the exclusive bargaining representative of its employees who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys.

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing,

and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in section 7 of the Act;

and that petitioner shall take the following affirmative action which the Board finds will effectuate the policies of the National Labor Relations Act:

(a) Upon request bargain collectively with the Union as the exclusive representative of its employees who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that petitioner will not engage in the conduct from which it is ordered to cease and desist, and (2) that petitioner will take the affirmative action set forth in the next preceding paragraph;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps petitioner has taken to comply therewith.

On April 9, 1942, petitioner notified the Board's Regional Director for the Twenty-first Region in

writing that it had taken no steps to comply with such order, desiring that underlying questions in this controversy be finally determined, and that for the purpose of insuring speedy determination of such questions it would file a petition for review of said order, pointing out that such questions and petitioner's reasons for non-compliance with the Board's order had already been stated in various pleadings and particularly in petitioner's exceptions to said intermediate report. The proceedings before the Board referred to in this paragraph and in paragraphs 8 to 12, inclusive, will be herein referred to as the "complaint proceedings."

14. The order of the Board dated March 30, 1942, and the purported findings of fact and conclusions of law upon which such order is based, and each and every order and proceeding taken or made by the Board as a basis or predicate for said order, are, and each of the same is erroneous, invalid, void, contrary to law and prejudicial to this petitioner, and in this connection petitioner alleges and specifies the following errors by which petitioner is aggrieved.

15. There is no substantial evidence to support the Board's finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding were and are employees within the meaning of the National Labor Relations Act.

16. There is no substantial evidence to support the Board's finding (Findings of Fact II) that the Union admitted or admits to membership employees of petitioner.

17. There is no substantial evidence to support the Board's findings (Findings of Fact III, A, 2; III, A, 3) that the Union was the duly designated bargaining representative of a majority of petitioner's employees in the unit referred to in said order, and that the Union was and is the exclusive representative for the purposes of collective bargaining of all employees of petitioner in such unit.

18. There is no substantial evidence to support the Board's finding (Findings of Fact III, A, 3) that this petitioner on November 14, 1941, and at all times thereafter interfered with, restrained and coerced its employees in the exercise of rights guaranteed under the National Labor Relations Act.

19. There is no substantial evidence to support the Board's finding (Findings of Fact III, A, 1) that all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys, constituted or constitute a unit appropriate for the purposes of collective bargaining, and that such unit insures to employees of petitioner the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the National Labor Relations Act.

20. The Board has failed to find or declare by finding of fact or conclusion of law or otherwise the meaning of the term "established spots," as that term is used in its findings of fact, conclusions of law and order of March 30, 1942.

21. The Board has failed to find or declare by finding of fact or conclusion of law or otherwise the meaning of the term "temporary newsboys," as that term is used in its findings of fact, conclusions of law and order of March 30, 1942.

22. While the Board's certification of the result of said election recites that there were 453 newsboys eligible to vote at said election conducted on May 15, 1941, and only a total of 161 votes were cast at said election for the Union as bargaining representative of said group, said order of March 30, 1942, is based upon a finding of fact (Findings of Fact III, A, 2) that the Union was the duly designated bargaining representative of a majority of said group, and a conclusion of law (Conclusions of Law 4) that the Union has been at all times and still is the exclusive representative of such group for the purposes of collective bargaining. Objection on this ground was made to the Board by petitioner by its said objections to the conduct of the ballot and to the election report.

23. The Board's Trial Examiner, at the hearing on December 16, 1941, erroneously excluded evidence tending to establish a fact contrary to the Board's finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding are employees within the meaning of the National Labor Relations Act, by rejecting an offer in evidence of a transcript of testimony and findings and award in a proceeding before the Industrial Accident Commission of the State of California, Claim No.

L. A. 53-671, the same being Los Angeles Examiner's Rejected Exhibits 1 and 2.

24. The Board made its finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding were and are employees within the meaning of the National Labor Relations Act solely upon evidence introduced at the hearing in said representation proceedings (June 10, 1940, to June 27, 1940), and the Board's prior determination of such employee status in said representation proceedings in the Board's decision and direction of elections, dated January 9, 1941. From such decision and direction of elections it will appear that the Board, in determining that such newsboys were employees of this petitioner has considered and relied upon evidence received at such hearing in said representation proceedings which was and is wholly inapplicable to the newsboys engaged in the street sales of this petitioner's newspaper, inasmuch as such evidence related solely to the activities and status of newsboys engaged in street sales of other newspapers published by other parties, and inasmuch as it was stipulated and agreed by counsel for the Board and counsel for this petitioner at said hearing that such evidence relating to the newsboys for other newspapers was not introduced against this petitioner or for the purpose of binding this petitioner.

25. There is no substantial evidence to support the Board's finding (Findings of Fact IV) that the activities of petitioner occurring in connection with its operations referred to in the Board's find-

ings, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

26. The Board erred in its conclusion of law (1) that the Union is a labor organization within the meaning of the National Labor Relations Act.

27. The Board erred in its conclusion of law (2) that newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, except temporary newsboys, were employees of petitioner and constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of the National Labor Relations Act.

28. The Board erred in its conclusion of law (4) that the Union has been and still is the exclusive representative of all employees in such unit for the purposes of collective bargaining within the meaning of the National Labor Relations Act.

29. The Board erred in its conclusion of law (5) that by refusing to bargain collectively with the Union as such exclusive representative petitioner has engaged in or is engaging in unfair labor practices within the meaning of the National Labor Relations Act.

30. The Board erred in its conclusion of law (6) that petitioner has interfered with, restrained and coerced its employees in the exercise of rights guaranteed in the National Labor Relations Act, and that petitioner has engaged in and is engaging in

unfair labor practices within the meaning of the National Labor Relations Act.

31. The Board erred in its conclusion of law (7) that such unfair labor practices are unfair labor practices affecting commerce within the meaning of the National Labor Relations Act.

32. The Board's finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding were and are petitioner's employees within the meaning of the National Labor Relations Act was and is contrary to the evidence that such newsboys purchased their merchandise at a wholesale price and for their remuneration depended upon profit from their retail sales, the volume of such profit being dependent upon their success in conducting such retail sales; that the methods used in attracting customers were determined by the newsboys themselves; that the question whether credit should be extended to customers was determined by each newsboy upon his own initiative; that the newsboys, on occasion, hired others to assist them and made a profit in so doing; that the right to sell competing publications at the same time was frequently exercised by such newsboys and that no allocation of time spent as between the competing publications could be made; that the right to co-operate with newsboys selling competing publications was exercised by the newsboys for their mutual benefit; that the newsboys were known to petitioner only as sales outlets and occupied no different position than that occupied by other retail sellers of petitioner's news-

paper, such as drug stores, cigar stands and news stands; as well as other evidence showing that such newsboys were independent contractors as distinguished from employees. Said finding is also in disregard of and contrary to decisions of the highest courts of California and other states (heretofore relied upon by petitioner in its business and operations) holding and declaring newsboys operating under the same or similar conditions to be independent contractors and not employees.

33. Petitioner has repeatedly and consistently contended that the newsboys involved in this proceeding were not and are not its employees within the meaning of the National Labor Relations Act, such contention having been made before the Board in petitioner's answer to and motion to dismiss the petition for investigation and certification of representatives, and its objections to validity of direction of elections and exceptions to the same and blanket objection to the ballot, and its objections to the conduct of the ballot and to the election report, in said representation proceedings, and its answer to and motion to dismiss the complaint, and its exceptions to the Trial Examiner's intermediate report in said complaint proceedings.

34. The Board's finding (Findings of Fact III, A, 1) that all newsboys engaged in the street sale of petitioner's newspaper at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys, constituted and constitute a unit appropriate for the

purposes of collective bargaining, was and is contrary to evidence that this petitioner's newspaper was and is sold on the streets by many newsboys who do not come within this limited and arbitrary definition of appropriate unit. There was no evidence showing that such unit was designated for the purposes of joining in a single group all alleged employees having a mutual interest in the objects of collective bargaining, or that the newsboys within such unit had or have any community of interest distinguishable from newsboys who are not included therein, or that the newsboys within such unit perform a different type or character of work from that performed by newsboys excluded therefrom, or that they have different skill or qualifications from those of the newsboys who are excluded, or that their experience or training is different from the experience or training of the newsboys excluded, or that their duties and responsibilities are different from those of the newsboys excluded. There was no evidence that the organization or operation of petitioner's business leads to any differentiation between newsboys within the designated unit and newsboys excluded therefrom, or that the desigated unit was established on the basis of any craft unit or industrial unit or any unit with a history of collective bargaining, or that the operations or other acts of petitioner have ever recognized or provided a basis for a differentiation between newsboys included within the designated unit and newsboys excluded therefrom. There was

no evidence of any word or act by which newsboys excluded from such unit had indicated their desire to be excluded therefrom. Under the definition of "appropriate unit" adopted by the Board there will be a constant shifting between personnel included within the designated unit and excluded personnel, so that time-consuming investigation would be necessary to determine as of any particular date which newsboys are within such unit (and thus affected by a collective bargain), and by the time such investigation were completed the personnel of the designated unit would have so changed as to render the results of such investigation worthless.

35. Petitioner has repeatedly and consistently contended that the designated bargaining unit was not an appropriate unit, such contention having been made before the Board in petitioner's objections to validity of direction of elections and exceptions to the same and blanket objection to the ballot, and its objections to the conduct of the ballot and to the election report, in said representation proceedings, and its answer, and its exceptions to the Trial Examiner's intermediate report, in said complaint proceedings.

36. The Board's finding (Findings of Fact, IV) that the activities of petitioner occurring in connection with its operations have a close, intimate and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce was and is contrary to

evidence that the newsboys engaged in the street sales of petitioner's newspaper in Los Angeles (the only newsboys involved in this proceeding) had nothing to do with interstate sales of petitioner's newspaper and that their activities did not and could not have any relations to newspapers sent out of the state, and that a diminution or complete cessation of street sales in Los Angeles would not diminish the volume of interstate sales. A refusal of petitioner to bargain with the Union would not increase or diminish or burden in any manner or affect the volume of interstate sales of petitioner's newspaper, or the volume of raw material received by it from other states incident to the production of its newspaper, e.g., newsprint, mats, news service, and material pertaining to features and advertising.

37. Petitioner has repeatedly and consistently contended that such activities have not had and do not have any close or intimate or substantial relation to trade, traffic, and commerce among the several states, or tend to lead to labor disputes burdening or obstructing commerce or the free flow of commerce, such contention having been made before the Board in petitioner's answer to and motion to dismiss the petition for investigation and certification of representatives, and its objections to validity of direction of elections and exceptions to the same and blanket objection to the ballot, and its objections to the conduct of the ballot and to the election report, in said representation proceedings, and its

answer to and motion to dismiss the complaint, and its exceptions to the Trial Examiner's intermediate report in said complaint proceedings.

38. There is no substantial evidence to support the Board's finding (III) in its decision and direction of elections, dated January 9, 1941, that the newsboys here involved are within the definition of employees as that term is used in the National Labor Relations Act, or its finding therein (IV) that questions have arisen concerning the representation of employees of petitioner, or its finding therein (V) that the questions concerning representation which have arisen have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, or its finding therein (VI) that all newsboys engaged in the street sale of petitioner's newspaper at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys, constitute a unit appropriate for the purposes of collective bargaining, and the Board's conclusions of law in said decision and direction of elections, based upon said findings, are erroneous.

39. There is no substantial evidence to support the Board's finding in its certification of representatives, dated October 20, 1941, that an election was conducted on May 15, 1941, among employees of petitioner, and the Board's certification that the Union has been designated and selected as a repre-

sentative for the purposes of collective bargaining by a majority of all employees of petitioner within a certain group, and that newsboys engaged in the street sale of petitioner's newspaper at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, are employees of petitioner, and that the Union is the exclusive representative of all such employees for the purposes of collective bargaining, is erroneous.

40. The Board erred in denying the motion of petitioner in said representation proceedings to dismiss the petition for investigation and certification of representatives.

41. The Board erred in overruling (on May 26, 1941) petitioner's "Objections to Validity of Direction of Elections and Exceptions to the Same: Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Los Angeles Examiner Unit)."

42. The Board erred in overruling (on September 26, 1941) petitioner's "Objections to the Conduct of the Ballot and To The Election Report."

43. The Board erred in denying the motion of petitioner to dismiss the complaint in said complaint proceedings.

44. The Board erred in its finding and ruling that the exceptions filed by this petitioner on February 2, 1942, to the intermediate report of the Trial Examiner in said complaint proceedings are without merit insofar as the same are inconsistent with the

Board's findings of fact, conclusions of law, and order, dated March 30, 1942.

45. Said decision and direction of elections, dated January 9, 1941, exceeds the authority and jurisdiction conferred upon the Board by the National Labor Relations Act, and deprives this petitioner of its property without due process of law and thereby violates Article V of the Amendments (being the Fifth Amendment) to the Constitution of the United States, and Article I, section 13, of the Constitution of California.

46. Said certification of representatives, dated October 20, 1941, exceeds the authority and jurisdiction conferred upon the Board by the National Labor Relations Act, and deprives this petitioner of its property without due process of law and thereby violates Article V of the Amendments (being the Fifth Amendment) to the Constitution of the United States, and Article I, section 13, of the Constitution of California.

47. Said order of the Board, dated March 30, 1942, and each and every part thereof, and each and every order and proceeding taken or made by the Board as a basis or predicate therefor, or upon which said order of March 30, 1942, is or may be based, exceed the authority and jurisdiction conferred upon the Board by the National Labor Relations Act, and deprive this petitioner of its property without due process of law and thereby violate Article V of the Amendments (being the Fifth Amendment) to the Constitution of the United States, and Article I, section 13, of the Constitution of California.

Wherefore, petitioner respectfully petitions and prays:

1. That respondent be required, in conformity with law, to certify to this Honorable Court a transcript of the entire record in these proceedings, including all pleadings, testimony and evidence upon which said order of March 30, 1942, was entered, all papers filed with the Board by petitioner in these proceedings, and all findings, conclusions ond orders of the Board affecting this petitioner; and including also the Board's certification and the entire record of its investigation under section 9(c) of the National Labor Relations Act, herein referred to as the representation proceedings, together with all pleadings, testimony and evidence, and all papers filed with the Board in such representation proceedings, and all findings, conclusions and orders of the Board affecting petitioner therein; and

2 That the Board's findings, conclusions and order of March 30, 1942, as well as all proceedings and orders taken and made by or before the Board as a basis or predicate for said order of March 3I, 1942, be reviewed by this Honorable Court; that said order of March 30, 1942, be set aside, vacated and annulled insofar as it relates to this petitioner; and that the complaint against this petitioner be dismissed; and

3. That this Honorable Court exercise its jurisdiction over the parties and the subject-matter of this petition, and grant to petitioner such other and

further relief in the premises as the rights and equities of the cause may required.

[Seal] HEARST PUBLICATIONS,
INCORPORATED,
By A. LAURENCE MITCHELL,
Its Secretary.
By OSCAR LAWLER,
MAX FELIX,
JOHN M. HALL,
A. LAURENCE MITCHELL,
Its Attorneys.

(Duly verified.)

[Endorsed]: Filed Apr. 24, 1942.

[Title of Circuit Court of Appeals and Cause No. 10112.]

NOTICE OF FILING OF PETITION FOR REVIEW

To National Labor Relations Board,
Washington, D. C.

Please take notice that the undersigned, respondent in Board's Case No. 2050, on April 24, 1942 filed in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, its written Petition for Review praying that the National Labor Relations Board's final order of March 30, 1942 in said Case No. C-2050 be set aside. Copy

of such petition is served upon you herewith, and reference to the same is made for further particulars.

Dated, April 25, 1942.

HEARST PUBLICATIONS,
INCORPORATED,
By JOHN M. HALL,
Its Attorney.

[Endorsed]: Filed Apr. 28, 1942.

AFFIDAVIT OF SERVICE OF NOTICE OF FILING OF PETITION FOR REVIEW

United States of America
State of California
County of Los Angeles—ss.

James C. White, being first duly sworn, deposes and says that he is, and at all times herein referred to was, a citizen of the United States of America and over eighteen years of age; that on April 25, 1942 he caused the annexed Notice of Filing of Petition for Review to be served upon National Labor Relations Board by delivering on that day at the office of William R. Walsh, Esq., the Regional Director for said Board for the Twenty-first Region, being the Board's office in the United States Post Office and Court House at Los Angeles, California, a duplicate original of said Notice, together with a true copy of the Petition referred to therein, and by depositing for transmission by registered mail, in the United

States Post Office at Los Angeles, California, on that day, enclosed in a sealed envelope, addressed to National Labor Relations Board, Shoreham Building, Washington, D. C., with registered postage thereon fully prepaid, a duplicate original of said Notice and a true copy of said Petition.

JAMES C. WHITE.

Subscribed and sworn to before me this 27th day of April, 1942.

[Seal] JEAN F. CROWE,
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires May 28, 1945.

[Title of Circuit Court of Appeals and Cause—No. 10112.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD AND REQUEST FOR ENFORCEMENT

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, hereinafter referred to as the Board, and pursuant to the National Labor Relations Act (49 Stat. 449, 29 U.S.C., Sec. 151, et seq.), hereinafter referred to as the Act, files this answer to the petition to review and set aside filed herein and this request for enforcement of the Board's order.

1. Answering the allegations of paragraphs 1, 22, 32, 34, 36, of the petition for review, the Board prays reference to the certified record of the proceedings before the Board filed herein, for a full and exact statement of the findings of fact, conclusions of law and order of the Board. To the extent that said allegations relate to matters not in issue in the proceedings before the Board and not, therefore, covered by or dealt with in the findings of fact, conclusions of law, and order of the Board, dated March 30, 1942, the Board alleges that they are irrelevant and immaterial to the issues in this case and neither admits nor denies them; to the extent that the said allegations relate to matters in issue in the proceedings before the Board and conflict with said findings of fact, conclusions of law, and order, the Board denies them.

2. The Board admits the allegations of paragraph 2 of the petition for review.

3. Answering the allegations contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 33, 35, and 37, of said petition for review, the Board prays reference to the certified transcript of the entire record of the proceedings before the Board filed herein for a full and exact statement of the pleadings, findings of fact, conclusions of law, and order of the Board, all of the evidence stated in this matter, and all other proceedings had in this matter before the Board.

4. The Board denies each and every allegation of error contained in paragraphs 14, 15, 16, 17, 18,

19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47 of said petition for review. Further answering, the Board avers that its said order is valid and proper in all respects.

Wherefore, having answered each and every allegation contained in said petition to review, the Board prays this Honorable Court that said petition be denied insofar as it prays that the order of the Board be set aside.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests this Honorable Court for the enforcement of its said order against petitioner dated March 30, 1942, in Case No. C-2050, entitled "In the Matter of Hearst Publications, Incorporated (Los Angeles Examiner Department) and Los Angeles Newsboys Local Industrial Union No. 75, C.I.O."

In support of this request for enforcement of its said order, the Board respectfully shows as follows:

(a) Petitioner is a California corporation with its principal office and place of business in San Francisco, California, within this judicial district. This Court has jurisdiction of said petition to review herein and this request for enforcement by virtue of Section 10 (e) and (f) of the National Labor Relations Act.

(b) Upon the proceedings had in Case No. C-2050 before the Board, including, without limitation, complaint, answer, hearing for the purpose of taking testimony, trial examiner's intermediate report, exceptions filed thereto, and oral argument

thereon, as more fully shown by the entire record in Case No. C-2050 certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on March 30, 1942, duly stated its findings of fact and conclusions of law and issued an order directed to petitioner, its officers, agents, successors, and assigns, as follows:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive bargaining representative of its employees who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union

No. 75, C.I.O., as the exclusive representatives of its employees who are newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(e) The Board's decision (comprising its findings of fact and conclusions of law) and order were duly served upon petitioner on March 30, 1942.

(d) Pursuant to Section 10 (e) and (f) of the National Labor Relations Act, the Board is certifying and filing with this Court the transcript of the entire record in Case No. C-2050 before the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and the entire record in

said proceedings before the Board to be served upon petitioner and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and proceedings set forth in the entire record of said proceedings, and upon the order made thereon, a decree denying the petition to review and enforcing in whole said order of the Board set forth above and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 5th day of June 1942.

ERNEST A. GROSS,
Associate General Counsel,
National Labor Relations Board.

(Duly Verified.)

[Endorsed]: Filed Jun. 10, 1942.

[Title of Circuit Court of Appeals and Cause—No. 10112.]

POINTS ON WHICH PETITIONER WILL RELY ON ITS PETITION FOR REVIEW

To:

The Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit;

Honorable Paul P. O'Brien, Clerk of the above entitled Court;

National Labor Relations Board:

Comes now petitioner herein, and in accordance with paragraph 6 of rule 19 of this Court files with the Clerk of this Court its concise statement of the points on which petitioner intends to rely on its petition for review herein:

1. There is no substantial evidence supporting the finding or conclusion of the Board that the newsboys engaged in street sales of Los Angeles Examiner and within the claimed bargaining unit were and are employees of petitioner.

2. There is no substantial evidence supporting the finding or conclusion of the Board that the claimed bargaining unit for so-called employees of Los Angeles Examiner was and is an appropriate unit.

3. There is no substantial evidence supporting the finding or conclusion of the Board that this peti-

tioner's activities and practices involved in this proceeding had and have a close, intimate and substantial relation to and tend to lead to labor disputes burdening and obstructing commerce, or that the same affect commerce within the meaning or purview of the Act.

4. The relationship of this petitioner with its alleged employees within the claimed bargaining unit is not subject to the jurisdiction of the Board.

Respectfully submitted,

HEARST PUBLICATIONS,
INCORPORATED,
By: OSCAR LAWLER,
MAX FELIX,
JOHN M. HALL,
A. LAURENCE MITCHELL,
By: JOHN M. HALL
Its Attorneys.

AFFIDAVIT OF SERVICE OF POINTS ON WHICH PETITIONER WILL RELY ON ITS PETITION FOR REVIEW

United States of America,
State of California,
County of Los Angeles—ss.

James C. White, being first duly sworn, deposes and says:

That he is and at all times herein referred to was a citizen of the United States of America and over

eighteen (18) years of age; that on July 10, 1942, he caused the annexed Points on Which Petitioner Will Rely on its Petition for Review to be served upon National Labor Relations Board by delivering on that day at the office of William R. Walsh, Esq., the Regional Director for said Board for the Twenty-first Region, being the Board's office in the United States Post Office and Court House at Los Angeles, a true copy of said Points on Which Petitioner Will Rely on its Petition for Review, and by depositing for transmission by registered mail in the United States Post Office at Los Angeles, California, on that day, enclosed in a sealed envelope addressed to National Labor Relations Board, Shoreman Building, Washington, D.C., with registered postage thereon fully prepaid, a true copy of said Points on Which Petitioner Will Rely on its Petition for Review.

JAMES C. WHITE

Subscribed and sworn to before me this 10th day of July, 1942.

[Seal] JEAN F. CROWE

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires May 28, 1945.

[Endorsed]: Filed Jul. 14, 1942.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10114

STOCKHOLDERS PUBLISHING COMPANY, INC.,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR REVIEW OF FINAL ORDER OF NATIONAL LABOR RELATIONS BOARD NO. C-2051

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Stockholders Publishing Company, Inc., a corporation, publisher of Daily News, a daily (except Sunday) newspaper, being a party aggrieved by final order of National Labor Relations Board, respectfully petitions this Honorable Court for a review of said Final Order which was entered on March 30th, 1942 by National Labor Relations Board (hereinafter for brevity called the "Board"), in a proceeding instituted by the Board against petitioner, designated upon the records of the Board as

"In the Matter of Stockholders Publishing

Company, Inc. and Los Angeles Newsboys Local Industrial Union No. 75 C.I.O.",

being case No. C-2051, and in support of its Petition your petitioner respectfully shows:

I.

That this Court has jurisdiction of this Petition by reason of the provisions of Section 10-F of the Act of Congress of July 5th, 1935 (49 Stat. 449), known as the National Labor Relations Act, and hereinafter referred to as the "Act".

II.

At all times herein mentioned petitioner was and is now a corporation organized and existing under the laws of the State of Nevada; it maintains one of its principal places of business and its publishing plant in the City of Los Angeles, State of California.

III.

In the complaint issued by the Board in said Case No. C-2051, it was alleged that petitioner had engaged in certain unfair labor practices in that it had refused to bargain collectively, with designated representatives of petitioner's employees, and the Board by its order of March 30th, 1942, aforesaid, found that petitioner had so refused to bargain collectively with said representatives.

IV.

That on the 6th day of June, 1940, Los Angeles Newsboys Local Industrial Union No. 75 C.I.O., an

alleged labor union hereinafter referred to as "Newsboys Union" filed a Petition for Investigation and Certification of Representatives, pursuant to Section 9-C of the Act, and responsive thereto the Regional Director of the Board caused said matter to be set down for hearing on the 10th day of June, 1940. Said proceeding is designated upon the records of the Board as

> "In the Matter of Stockholders Publishing Company, Inc. and Los Angeles Newsboys Local Industrial Union No. 75 C.I.O.",

being proceeding No. R-1923; said proceeding will be hereinafter referred to as the "Certification Case".

V.

That subsequent to the filing of said Certification Case, petitioner filed with said Regional Director its Motion to Dismiss said Petition for Investigation, and also an answer to said Petition.

That by said Motion petitioner advanced eight separate grounds therefor, which may be briefly stated as:

(1) That the Board had no jurisdiction over respondent (petitioner herein);

(2) That Respondent was not engaged in interstate commerce, and that therefore the Board had no jurisdiction;

(3) That no member of the Newsboys Union was an employee of petitioner;

(4) That the persons constituting the unit of the alleged Union were not employees of

petitioner but were independent contractors;

(5) That the persons engaged in the sale and distribution of newspapers and included within the unit aforesaid were engaged in intra-state business and not in inter-state business or in any business activity having a close, intimate, substantial or any relation to trade traffic or commerce among the several states or territories of the United States and foreign countries.

(6) That the cessation of news vending activities of the members of the alleged Union would not result in burdening or obstructing commerce or the free flow of commerce, nor tend to lead to a labor dispute burdening or obstructing commerce or the free flow thereof.

VI.

That said Motion to Dismiss was denied by the Board and said Certification Case thereafter came on for hearing at Los Angeles on June 10th. 1940, and terminated on June 27th, 1940.

VII.

On January 9th, 1941, the Board duly rendered its decision and direction of elections in said Certification Case, and determined and found thereby that the news venders aforesaid were employees of petitioner, and directed that an election be held for the purpose of determining representatives among "full time" newsboys, which term "full time" newsboys was defined by stipulation dated the 29th day of March, 1941, to mean

"a newsboy who sells to the general public 5, 6, 8, 9 and 10 star editions, or 6, 8, 9 and 10 star editions of the News 5 or more days a week, and means a newsboy who sells the 4 star edition and previous editions of the News for a minimum of 4 hours per day between the hours of 4 o'clock A.M. and 10 o'clock A.M. 5 or more days a week".

VIII.

That on or about the 12th day of May, 1941, Petitioner filed with the Regional Director of the Board a blanket challenge and objection to the votes of all newsboys which might be cast at the proposed election, basing its challenge and objections on the lack of jurisdiction of the Board, upon the claim that all newsboys coming within the alleged unit were in fact independent contractors and not employees of petitioner, and upon substantially the same grounds used by it in the making of its Motion to Dismiss previously referred to.

That thereafter, and on May 14th, 1941, an election was held as ordered by the aforesaid decision and direction of elections, and on the 17th day of May, 1941, the Board, acting through William R. Walsh, Acting Regional Director, issued its election report, overruling petitioner's objection and challenge above referred to, and making the following finding:

"The undersigned hereby makes his findings with respect to the result of said secret ballot:

Total on eligibility list,	349
Total ballots cast,	247
Total ballots challenged	36
Total blank ballots,	1
Total void ballots,	1
Total ballots not counted,	38
Total ballots counted,	209
Total votes for Los Angeles Newsboys Local Industrial Union #75 C.I.O.	191
Total votes against Los Angeles Newsboys Local Industrial Union #75 C.I.O.	18"

IX.

That thereafter and on or about the 23rd day of May, 1941, petitioner filed with the Regional Director of the Board aforesaid, its objections to election report and the conducting thereof and thereafter said Regional Director issued his report on said objections overruling each and all of such objections made by petitioner.

X.

That on July 30th, 1941, the Board duly rendered its supplemental decision and certification of representatives, wherein it sustained and affirmed the rulings of the Regional Director heretofore referred to, with respect to petitioner's challenge and objections to the conducting of the election and to the election report, and in that portion thereof termed "Certification of Representatives" the Board certified as follows:

"It is hereby certified that Los Angeles

Newsboys Local Industrial Union No. 75 C.I.O. has been designated and selected by a majority of all employees of Stockholders Publishing Company, Inc., Los Angeles, California, who are full time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual and part time newsboys, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the Act Los Angeles Newsboys Local Industrial Union No. 75 C.I.O. is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment".

XI.

That on or about November 21st, 1941, said Newsboys Union filed a charge against petitioner pursuant to Section 10(b) of the Act, alleging that petitioner had engaged and was engaging in unfair labor practices, and that it refused to recognize and bargain with said Newsboys Union. Thereafter and on or about the 5th day of December, 1941, the Board by its Regional Director aforesaid issued a complaint against petitioner in a proceeding designated as

"In the Matter of Stockholders Publishing Company, Inc. and Los Angeles Newsboys Local Industrial Union No. 75 C.I.O."

being case No. XXI-C-1957, and included in said complaint a notice of the hearing of said charge before a Trial Examiner, fixing the date thereof for the 15th day of December, 1941, which proceeding will be hereinafter referred to as the "Complaint Case".

XII.

That on or about the 11th day of December, 1941, petitioner filed a motion to dismiss said complaint, and on or about the same day filed its answer thereto. That the grounds for the motion to dismiss were substantially the same as those assigned in support of petitioner's motion to dismiss in the Certification Case. Said case came on for hearing at Los Angeles on or about the 16th day of December, 1941.

XIII.

That thereafter and on or about January 7th, 1942, the Trial Examiner, Thomas S. Wilson, made and filed his Intermediate Report; that on or about the 4th day of February, 1942, petitioner filed its Exceptions to the Intermediate Report and other parts of the record and proceedings, and accompanied the same by a Brief in support thereof.

That thereafter and on the 19th day of February, 1942, oral argument was had on said Exceptions to said Intermediate Report before the Board at Washington, D. C.

XIV.

On March 30th, 1942, the Board rendered its Decision and Order in said case. It is this Order which petitioner is seeking to have reviewed.

XV.

In the "Decision and Order" aforesaid, the Board, under the title of "Statement of the Case" considers jointly the case of Hearst Publications, Incorporated (Los Angeles Examiner Department) and Los Angeles Newsboys Local Industrial Union No. 75 C.I.O., being case number C-2050, with the case of petitioner, but makes separate Findings of Fact, separate Conclusions of Law and separate Orders, and insofar as petitioner is concerned the Order reads as follows:

"Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Stockholders Publishing Company, Inc., and its officers, agents, successors, and assigns, shall,

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive bargaining representative of its employees who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right

to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. To take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive representative of its employees who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith."

XVI.

With respect to the decision of the Board in the Certification Case dated January 9, 1941, as supplemented by decision dated January 30, 1941, it is respectfully submitted the Board erred in the following respects:

(a) In denying petitioner's Motion to Dismiss Petition for Investigation;

(b) In the making of Finding II under the title of "The Organization Involved", which finding reads as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75 C.I.O. is a labor organization chartered by the Congress of Industrial Organizations admitting to membership all persons in the Metropolitan area of Los Angeles employed in the general distribution and sale of newspapers, magazines and periodicals, except those who have the power to hire and discharge",

in that such finding is not supported by substantial evidence.

(c) In Finding (the latter portion of Finding III):

> "Accordingly we find that the newsboys involved in this proceeding are employees within the meaning of Section 2(3) of the Act",

in that such Finding is not supported by substantial evidence.

(d) In finding (a part of Finding IV) as follows:

"We find that questions have arisen concern-

ing the representation of the employees of the companies",

in that such Finding is not supported by substantial evidence.

(e) In making its Finding V, reading as follows:

"We find that the questions concerning representation which have arisen occurring in connection with the operations of the companies described in Section I above have a close, intimate and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce",

in that such Finding is not supported by any substantial evidence.

(f) In the making of that part of Finding VI reading as follows:

"We find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining: all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys",

in that there is no substantial evidence to support such Finding.

(g) In the making of that part of Finding VII reading as follows:

"At the hearing lists prepared by the * * * News * * * were introduced in evidence purporting to show the following approximate current number of newsboys employed * * *

News.....110"

in that such finding is not supported by substantial evidence.

(h) In reaching its conclusions of law numbered 1 and 2(a), in that such conclusions of law are not supported by any substantial evidence.

(i) In denying, March 21st, 1941, petitioner's motion to re-open proceedings and for modification of Decision; in disallowing petitioner's blanket challenge of all votes, and overruling petitioner's objection filed on the 12th day of May, 1941, in case No. R-923.

(j) In certifying by its Supplemental Decision and Certification of Representatives,

"That Los Angeles Newsboys Local Industrial Union No. 75 C.I.O. has been designated and selected by a majority of all employees of Stockholders Publishing Company, Inc., Los Angeles, California, who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9(a) of the Act Los Angeles Newsboys Local Industrial Union No. 75 C.I.O. is the exclusive representative of all such em-

ployees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment."

XVII.

It is further respectfully submitted that in its Decision and Order of March 30th, 1942 in the "Complaint Case", the Board erred in the following respects:

(a) In affirming the rulings of the Trial Examiner denying petitioner's motion to dismiss the Complaint;

(b) In the making of Finding II reading as follows:

> "Los Angeles Newsboys Local Industrial Union No. 75 C.I.O. is a labor organization chartered by the Congress of Industrial Organizations admitting to membership employees of the respondents",

in that such finding is not supported by substantial evidence.

(c) In making that part of Finding A-II, reading as follows:

> "We find, as did the Trial Examiner, that on and at all times after July 30th, 1941, with respect to the News * * * the Union was the duly designated bargaining representative of a majority of the employees in each of the aforesaid appropriate units, and that pursuant to the provisions of Section 9(a) of the Act the Union was at all such times and is now the ex-

clusive representative of all employees in each of the aforesaid units for the purposes of collective bargaining and with respect to rates of pay, wages, hours of employment and other conditions of employment",

in that such finding is not supported by substantial evidence.

(d) In finding as a part of Finding III as follows:

"We hold that the newsboys involved in this proceeding are employees within the meaning of Section 2 (3) of the Act",

in that such finding is not supported by substantial evidence.

(e) In finding, as a part of Finding III, as follows:

"We find, as did the Trial Examiner, that the respondent News on August 27th, 1941, and at all times thereafter, * * * has (each) refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, and has thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act,"

in that such finding is not supported by substantial evidence.

(f) in the making of its Finding IV, reading as follows:

"The activities of (each of the respondents) set forth in Section III above, occurring in

connection with the operations of (each of the respondents) described in Section I above have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce",

in that the same is not supported by substantial evidence.

(g) In failing to make any finding with respect to petitioner's second, fourth and fifth specially pleaded defenses.

(h) In its conclusions of law numbered 1 to 7 inclusive, in that such conclusions are not supported by any substantial evidence.

Wherefore, petitioner prays:

1. That respondent National Labor Relations Board be required to certify and file with this Honorable Court a full, true and correct copy of the transcript of record and the proceedings in the Certification Case No. R-1923 herein referred to, and in the Complaint Case No. C-2051, being the proceeding wherein the order herein sought to be reviewed was made.

2. That the decision, findings, conclusions of law and order of said Board in said Complaint Case No. C-2051 be reviewed by this Court, and that said

order in said Complaint Case be set aside, vacated and annulled.

3. For all appropriate relief.

STOCKHOLDERS PUBLISHING COMPANY, INC.
Petitioner
By L. B. BINFORD
By HOWARD M. BINFORD
Its Attorneys

(Duly verified.)

[Endorsed]: Apr. 24, 1942.

[Title of Circuit Court of Appeals and Cause—No. 10114.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Los Angeles—ss.

Irene M. Aldrich, being first duly sworn, says:

That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled cause; that affiant's business address is 1208 Hollingsworth Building in the City of Los Angeles, County of Los Angeles, State of California. That on the 27th day of April, 1942, affiant served a copy of the Petition

for Review of Stockholders Publishing Company, Inc., on file herein, including a copy of this Affidavit of Service, together with Notice of the filing of same, a true and correct copy of which Notice is attached hereto, on National Labor Relations Board, Washington, D. C., and on William R. Walsh, Director of the Twenty-first Region, by placing true copies thereof in envelopes properly postaged and addressed as follows:

"National Labor Relations Board,
Shoreham Building,
Washington, D. C."

"Mr. William R. Walsh,
Regional Director of the Twenty-first Region,
National Labor Relations Board,
U. S. Post Office and Courthouse,
Los Angeles, California."

and by then sealing said envelopes and depositing the same, registered mail, with postage thereon fully prepaid, in the United States Postoffice at Los Angeles, California.

That there is delivery service by United States mail at the places so addressed and there is a regular communication by mail between the place of mailing and the places so addressed.

IRENE M. ALDRICH

Subscribed and sworn to before me this 27th day of April, 1942.

[Seal] V. I. MacMAHON

Notary Public in and for said County and State.

[Title of Circuit Court of Appeals and Cause—No. 10114.]

NOTICE OF FILING OF PETITION

To: National Labor Relations Board, Shoreham Building, Washington, D. C.:

Notice is hereby given that Stockholders Publishing Company, Inc., on the 24th day of April, 1942, filed in the United States Circuit Court of Appeals for the Ninth Circuit, a Petition for Review of the decision and order of the National Labor Relations Board dated March 30, 1942, issued in the above entitled matter, being proceeding No. C-2051, and that said proceeding is numbered 10114 in the Circuit Court of Appeals in said District.

Dated this 27th day of April, 1942.

STOCKHOLDERS PUBLISHING COMPANY, INC.
Petitioner
By L. B. BINFORD
By HOWARD M. BINFORD
Its Attorneys

[Endorsed]: Filed Apr. 28, 1942.

[Title of Circuit Court of Appeals and Cause—No. 10114.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD AND REQUEST FOR ENFORCEMENT

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, hereinafter referred to as the Board, and pursuant to the National Labor Relations Act (49 Stat. 449, 29 U.S.C., Sec. 151, et seq.), hereinafter referred to as the Act, files this answer to the petition to review and set aside filed herein and this request for enforcement of the Board's order.

1. The Board admits the allegations contained in paragraphs I and II of said petition for review.

2. Answering the allegations contained in paragraphs III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, and XV, of said petition for review, the Board prays reference to the certified transcript of the entire record of the proceedings before the Board filed herein for a full and exact statement of the pleadings, findings of fact, conclusions of law, and order of the Board, all of the evidence stated in this matter, and all other proceedings had in this matter before the Board.

3. The Board denies each and every allegation of error contained in paragraph XVI, subdivisions (a) to (j), inclusive, and in paragraph XVII, sub-

divisions (a) to (h), inclusive, of said petition for review. Further answering, the Board avers that its said order is valid and proper in all respects.

Wherefore, having answered each and every allegation contained in said petition to review, the Board prays this Honorable Court that said petition be denied insofar as it prays that the order of the Board be set aside.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests this Honorable Court for the enforcement of its said order against petitioner dated March 30, 1942, in Case No. C-2051, entitled "In the Matter of Stockholders Publishing Company, Inc. and Los Angeles Newsboys Local Industrial Union No. 75 C. I. O."

In support of this request for enforcement of its said order, the Board respectfully shows as follows:

(a) Petitioner is a Nevada corporation having its principal place of business in Los Angeles, California, within this judicial circuit. This Court has jurisdiction of said petition to review herein and this request for enforcement by virtue of Section 10 (e) and (f) of the National Labor Relations Act.

(b) Upon the proceedings had in Case No. C-2051 before the Board, including, without limitation, complaint, answer, hearing for the purpose of taking testimony, trial examiner's intermediate report, exceptions filed thereto, and oral argument thereon, as more fully shown by the entire record of Case No. C-2051 certified by the Board and filed

with this Court herein, to which reference is hereby made, the Board on March 30, 1942, duly stated its findings of fact and conclusions of law and issued an order directed to petitioner, its officers, agents, successors, and assigns, as follows:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive bargaining representative of its employees who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C.I.O., as the exclusive representative

of its employees who are full-time newsboys and checkmen engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order, and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(c) The Board's decision (comprising its findings of fact and conclusions of law) and order were duly served upon petitioner on March 30, 1942.

(d) Pursuant to Section 10 (e) and (f) of the National Labor Relations Act, the Board is certifying and filing with this Court the transcript of the entire record in Case No. C-2051 before the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and the entire record in said proceedings before the Board to be

served upon petitioner and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and proceedings set forth in the entire record of said proceedings, and upon the order made thereon, a decree denying the petition to review and enforcing in whole said order of the Board set forth and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 5th day of June 1942.

ERNEST A. GROSS
Associate General Counsel
National Labor Relations Board

(Duly verified.)

[Endorsed]: Filed Jun. 10, 1942.

[Title of Circuit Court of Appeals and Cause—No. 10114.]

POINTS ON WHICH PETITIONER WILL RELY ON ITS PETITION FOR REVIEW (No. C-2051)

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth District:

Stockholders Publishing Company, Inc., petitioner herein, herewith files with the Clerk of this

Court its concise statement of points on which petitioner intends to rely on its petition for review, all in accordance with paragraph 6 of rule 19 of Rules of Court:

1. That there is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that the business or activities of petitioner involved in this proceeding have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

2. That there is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that the newsboys, as distinguished from so-called wholesalers or checkmen, involved in this proceeding and within the claimed bargaining unit were or are employees of petitioner within the meaning of Section Two (Three) of the Act.

3. That there is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that the claimed bargaining unit was or is an appropriate unit or that Los Angeles Newsboys Local Industrial Union No. 75, C.I.O. has been or still is the exclusive representative of all employees in such unit for the purposes of collective bargaining within the meaning of Section Nine (a) of the Act.

4. The relationship of petitioner with its newsboys (alleged employees of petitioner) is not sub-

ject to the jurisdiction of the National Labor Relations Board.

Respectfully submitted,

STOCKHOLDERS PUBLISHING COMPANY, INC. (Publishers of Daily News at Los Angeles)

By BINFORD & BINFORD
L. B. BINFORD
HOWARD M. BINFORD
By HOWARD M. BINFORD
Its Attorneys

AFFIDAVIT OF SERVICE OF POINTS ON WHICH PETITIONER WILL RELY ON ITS PETITION FOR REVIEW

United States of America,
State of California,
County of Los Angeles—ss.

Howard M. Binford, being first duly sworn, deposes and says:

That he is and at all times herein referred to was a citizen of the United States of America and over eighteen (18) years of age; that on July 11, 1942, he caused the annexed Points on Which Petitioner Will Rely on its Petition for Review to be served upon National Labor Relations Board by on that date depositing for transmission by registered mail in the United States Post Office at Los Angeles, California, enclosed in sealed envelopes, addressed to William R. Walsh, Esq., Regional Director for

the Twenty-First Region, United States Post Office and Court House, Los Angeles, California, and National Labor Relations Board, Shoreham Building, Washington, D. C., with registered postage thereon fully prepaid, true copies of said Points on Which Petitioner Will Rely on its Petition for Review.

HOWARD M. BINFORD

Subscribed and sworn to before me this 11th day of July, 1942.

V. I. MacMAHON

Notary Public in and for said County and State.

[Endorsed]: Filed Jul. 14, 1942.

United States Circuit Court of Appeals
For the Ninth Circuit
No. 10115

HEARST PUBLICATIONS, INCORPORATED,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR REVIEW OF FINAL ORDER OF NATIONAL LABOR RELATIONS BOARD.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now Hearst Publications, Incorporated, a California corporation, a party aggrieved by a final

order of the National Labor Relations Board, and files this its petition, pursuant to the provisions of section 10 (f) of the Act of Congress of July 5, 1935 (49 Stat. 449—Title 29 U. S. C. A., sections 151 to 166), known and cited as the National Labor Relations Act, for the review of the decision and final order of the National Labor Relations Board, dated March 30, 1942, directing that petitioner cease and desist from certain practices, denominated by said Board as "unfair labor practices". The proceeding resulting in said order is entitled upon the Board's records "In the Matter of Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., Case No. C-2023", and said case before the Board was consolidated with Case No. C-2024, entitled "In the Matter of the Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O." In support of this petition, this petitioner respectfully shows:

1. Petitioner is and at all times herein referred to was a California corporation engaged in business in the State of California, within this judicial circuit. Petitioner maintains and at all of said times has maintained an office and places of business within the State of California. Petitioner has continuously for many years maintained and operated as a separate and distinct enterprise and department of its business a newspaper printing and publishing plant at Los Angeles, California, known

as the "Los Angeles Evening Herald and Express Department", at which plant it prints a six day daily evening newspaper known as the "Los Angeles Evening Herald and Express", and sometimes in the proceedings before the Board referred to as the "Herald". A part of each issue of such newspaper is sold to newsboys, who in turn resell the same to retail purchasers on the streets of the City of Los Angeles. Petitioner has in connection with its said Los Angeles Evening Herald and Express Department an investment in plant and equipment and in press franchises, circulation and good will of a value amounting to many hundreds of thousands of dollars.

2. Respondent, National Labor Relations Board, herein referred to as the "Board" is an agency of the government of the United States of America, created pursuant to the Act of Congress of July 5, 1935 (49 Stat. 449—Title 29 U. S. C. A., sections 151 to 166), known and cited as the National Labor Relations Act. The duly appointed, qualified and acting members of said Board are now Messrs. Harry A. Millis, Wm. A. Leiserson and Gerard D. Reilly. Said Board at all times herein referred to had an office and a Regional Director for the Twenty-first Region at Los Angeles, California, within this judicial circuit and within the jurisdiction of this Court. As will hereinafter more fully appear, all of the so-called unfair labor practices, in which in this proceeding it is alleged that petitioner engaged, occurred at Los Angeles, California.

within this judicial circuit and within the jurisdiction of this Court. This Court has jurisdiction of this petition by virtue of section 10 (f) of the National Labor Relations Act.

3. On or about April 21, 1939, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., herein referred to as the "Union", filed with the Board's Regional Director for the Twenty-first Region of Los Angeles, California, a "Petition for Investigation and Certification of Representatives Pursuant to Section 9 (c) of the National Labor Relations Act." By such Petition the Union alleged that this petitioner was an employer engaged in business as "Publishers"; that certain newsboys selling papers at main spots, full-time corners and checkmen within the City of Los Angeles constituted an appropriate bargaining unit; that newsboys within such unit were employees of petitioner, and that a majority of such employees had designated the Union to be their representative for collective bargaining; that a question had arisen concerning the representation of employees in such bargaining unit, and that such question was one affecting commerce within the meaning of the National Labor Relations Act. By such petition the Union requested that the Board investigate such controversy and certify to the parties the name or names of the representatives that had been designated or selected by such newsboys. On or about February 7, 1940, the Union filed an amended petition, which said petition was amended with respect

to the allegations therein concerning the alleged appropriate unit. On or about June 10, 1940, the Union filed its second amended petition, said petition being amended with respect to the allegations therein concerning the alleged appropriate unit. Such second amended petition described the unit alleged to be the appropriate bargaining unit as "all main spot newsboys, full-time newsboys and checkmen who are engaged to sell the Los Angeles Evening Herald and Express within the city limits of Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys". The said proceeding before the Board was numbered Case No. XXI-R-928, and was thereafter numbered Case No. R-1924. Orders of the Board, dated March 27, 1940 and June 5, 1940, directed that said Case No. R-1924 be consolidated with three other cases known before said Board as Case No. R-1923 (formerly numbered XXI-R-927); Case No. R-1925 (formerly numbered XXI-R-1062); and Case No. R-1926 (formerly numbered XXI-R-1084), involving said Union and Stockholders Publishing Company, Inc., The Times-Mirror Company and Hearst Publications, Incorporated (Los Angeles Examiner Department) respectively.

4. Previous to the commencement of the hearing hereinafter referred to, and on or about, to-wit, June 6, 1940, petitioner duly served and filed its written motion to dismiss amended petition for investigation and certification of representatives. At and during the said hearing, by stipulation entered

into between counsel on the first day of said hearing, to-wit, June 10, 1940, petitioner's motion to dismiss was deemed to apply to the second amended petition filed in said matter. Said motion to dismiss was denied by the Board's Decision and Direction of Elections, dated January 9, 1941, hereinafter referred to. On or about June 10, 1940, this petitioner duly served and filed its written answer to said amended petition for investigation and certification of representatives, denying that it was an employer of the persons claimed to be represented by the Union, denying that the alleged bargaining unit was the appropriate bargaining unit, denying that the alleged unit included any of petitioner's employees, denying that the Union had been designated or selected as a representative for purposes of collective bargaining by such alleged unit, and denying that any question concerning the representation of such newsboys was a question affecting commerce within the meaning of the National Labor Relations Act.

Said hearing above mentioned was held at Los Angeles, California, before the Board's Trial Examiner, upon the petitions and answers in these consolidated cases. Such hearing commenced on or about June 10, 1940 and continued to on or about June 27, 1940.

5. By its decision and direction of elections in said consolidated cases, dated January 9, 1941, the Board directed that elections be conducted among certain newsboys engaged in street sales of the news-

papers published by the companies involved. It was thereby directed that an election be held among newsboys engaged in the street sale of petitioner's newspaper as follows:

> "All full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, to determine whether such newsboys desired to be represented by the Union for purposes of collective bargaining."

This decision and direction of elections was subsequently amended by "Fourth Amendment to Decision and Direction of Elections", dated April 12, 1941, by striking therefrom the second paragraph of Section VI of the Decision (appearing on page 17 of the original Decision) and substituting therefor, as a separate paragraph, the following:

> "Thus defined, with respect to the Los Angeles Evening Herald and Express, the term 'full-time' newsboy means a newsboy who regularly sells to the public five or more editions a day five or more days a week; the term 'part-time' newsboy means a newsboy who sells to the public less than five editions a day or who sells to the public all or any of the daily editions published by the Los Angeles Evening Herald and Express less than five days a week."

6. Prior to the holding of the election ordered, it was agreed between a representative of the

Board and this petitioner that the participation of this petitioner in any discussion relative to the conduct of such election should not be deemed acquiescence by this petitioner in the correctness of the ruling of the Board on January 9, 1941, as amended, directing the holding of such election, nor be deemed a waiver of petitioner's contention that the Board had no jurisdiction over it with respect to the subject matter of such controversy. Also prior to such election, and on or about May 14, 1941, petitioner filed a challenge to the vote of each and every voter or person attempting to vote at the election ordered by the National Labor Relations Board and objection to the holding of said election, which said challenge and objection was overruled by William R. Walsh, Acting Regional Director, Twenty-first Region, National Labor Relations Board, in that certain election report dated May 17, 1941. On or about May 14, 1941, an election was conducted under the direction and supervision of the Board's Regional Director for the Twenty-first Region among full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, within said group, and said Regional Director thereafter, and on or about May 17, 1941, filed his report with reference to such election. On or about May 23, 1941, petitioner duly served and filed its written "Objections to the Conduct of the Ballot and to the Election Report." On May 26, 1941, the Re-

gional Director issued his "Report on Objections", and said objections were overruled by the Board by its certain "Supplemental Decision and Certification of Representatives", dated July 30, 1941.

7. The Board, by its "Supplemental Decision and Certification of Representatives", dated July 30, 1941, certified that as a result of said election the Union had been designated and selected by a majority "of all employees" of this petitioner "Who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, as their representative for the purposes of collective bargaining" and that the Union was the exclusive representative of "all such employees" for the purposes of collective bargaining. The proceedings before the Board, referred to in this and preceding paragraphs, will be herein referred to as the "representation proceedings".

8. On or about October 25, 1941, the Board issued its complaint against petitioner, alleging, among other things, that the Union was a labor organization within the meaning of the National Labor Relations Act; that a unit for the purposes of collective bargaining, composed of full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, would insure to such employees the full benefit of their right to self-organization and collec-

tive bargaining, and that such unit was appropriate for the purposes of collective bargaining; that by May 14, 1941, or before that date, a majority of the employees of this petitioner within such unit had designated the unit as their representative for the purpose of bargaining collectively with petitioner, and that this majority status of the Union within such unit had continued up to and including the date of such complaint; that petitioner had continuously failed and refused to bargain collectively in good faith with the Union; that by such failure and refusal petitioner had engaged in and was engaging in unfair labor practices within the meaning of the National Labor Relations Act; that the acts of petitioner in connection with the operation of its business had a close, intimate and substantial relation to trade, traffic and commerce among the several states and tended to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce; and that the acts of petitioner constituted unfair labor practices affecting commerce and the free flow of commerce within the meaning of Section 8, subsections (1) and (5) and Section 2, subsections (6) and (7) of the National Labor Relations Act. This proceeding before the Board was numbered Case No. XXI-C-1840, and was thereafter numbered Case No. C-2023, and by order of the Board, dated October 23, 1941, was ordered consolidated with Case No. XXI-C-1843, thereafter numbered Case No. C-2024, involving The Times-Mirror Company and the said Union.

9. That on or about November 7, 1941, this petitioner duly served and filed its written answer to said complaint, wherein, among other matters, it denied the allegations of said complaint hereinbefore referred to, except that it admitted that it had refused to bargain collectively with the Union and alleged that such refusal was in good faith and upon the advice of competent counsel and in the bona fide belief that the National Labor Relations Board had no jurisdiction over petitioner with respect to petitioner's relationship with the newsboys referred to in the complaint, who were independent contractors and not employees. By such answer petitioner also affirmatively alleged that the Board had no jurisdiction over petitioner; that petitioner was not engaged in interstate or foreign commerce; that no member of the Union was an employee of petitioner; that the persons within the alleged bargaining unit were not petitioner's employees; that the newsboys referred to in the complaint were engaged solely in intrastate commerce and were not engaged in interstate commerce or in any business activity having a close, intimate or substantial, or any relation to trade, traffic or commerce among the several states or the territories of the United States and foreign countries; that no refusal of petitioner to bargain with the Union could burden or obstruct commerce or lead or tend to lead to a labor dispute, burdening or affecting commerce or the free flow of commerce; that no cessation of the newsvending ac-

tivities of the members of the Union or the newsboys referred to in the complaint would burden or obstruct commerce or the free flow of commerce, or lead to or tend to lead to a labor dispute burdening or affecting commerce or the free flow of commerce, and that the Board had no jurisdiction over the relations of petitioner with persons engaged in the independent business of vending the newspaper published by petitioner.

10. On or about November 7, 1941, this petitioner duly served and filed its written motion to dismiss said complaint, urging therein as grounds therefor the matters to which reference is made in paragraph 9 hereinabove. At the subsequent hearing upon said complaint, such motion was denied by the Board's Trial Examiner.

11. On November 10th and 12th, 1941, a hearing was held at Los Angeles, California, before the Board's Trial Examiner, upon said complaint and answer, as well as upon the complaint and answer in said Case No. C-2024. At such hearing a written stipulation was made by representatives of this petitioner, the Union and the Board, and offered in evidence by the Board's attorney and received in evidence, by which it was agreed that there had been no material change in the conduct of the business of petitioner since the hearing in the representation proceedings in June, 1940, and that, if all the witnesses called by the Union, the Board and petitioner at such representation hearing were

called testify in this complaint proceeding, their testimony would be substantially the same as their testimony given at such hearing in the representation proceedings, provided that nothing in said stipulation contained would be deemed to constitute an admission by petitioner that such testimony was sufficient to support a finding of fact or conclusion of law that the members of the Union, or any of them, were employees of petitioner, or constitute a waiver by petitioner of its right to contend that the evidence taken at the hearing in the representation proceedings was insufficient to show that any member of the Union or any of the persons within the unit which had been held by the Board to be appropriate was an employee of petitioner, or a waiver of petitioner's right to contend on all or any of the grounds urged before, at, or after said hearing in the representation proceedings, or on all or any of the grounds urged in petitioner's motion to dismiss the complaint in said Case No. C-2023, that the Board had no jurisdiction over petitioner, and that petitioner by entering into such stipulation did not admit, consent or agree that any of the members of the Union was an employee of petitioner within the purview of the National Labor Relations Act, and did not thereby or at all consent to or subject itself to the jurisdiction of the Board, and did not waive any of the grounds of objection theretofore asserted and maintained in the representation proceedings and

by its answer and motion to dismiss in said Case No. C-2023.

12. Thereafter such Trial Examiner issued his "Intermediate Report", dated December 4, 1941, finding that this petitioner had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (5) and Section 2, subsections (6) and (7) of the National Labor Relations Act, and recommending that this petitioner cease and desist from such unfair labor practices, and, upon request, bargain collectively with the Union. That on or about January 5, 1942, this petitioner duly served and filed with the Board written exceptions to such Intermediate Report and other parts of the record and proceeding and a brief in support thereof. On January 22, 1942, a hearing for the purpose of oral argument was held before the Board at Washington, D. C.

13. Thereafter the Board issued its decision and order, dated March 30, 1942; which order is now a final order of the Board. This order, upon the basis of certain findings of fact and conclusions of law, directs that petitioner shall cease and desist from:

(a) Refusing to bargain collectively with the Union as the exclusive bargaining representative of its employees, who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, exclud-

ing bootjackers, temporary, casual and part-time newsboys.

(b) Engaging in any like or related acts or conduct interfering with, restraining or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act;

and that petitioner shall take the following affirmative action which the Board finds will effectuate the policies of the National Labor Relations Act:

(a) Upon request, bargain collectively with the Union as the exclusive representative of its employees who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty consecutive days from the date of posting, stating (1) that petitioner will not engage in the conduct from which it is ordered to cease and desist, and (2) that petitioner will take the affirmative action set forth in the next preceding paragraph;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this order, what steps petitioner has taken to comply therewith.

On April 8, 1942, petitioner notified the Board's Regional Director for the Twenty-first Region, in writing, that it had taken no steps to comply with such order, desiring that underlying questions in this controversy be finally determined, and that for the purpose of insuring speedy determination of such questions, it would file a petition for review of said order, pointing out that such questions and petitioner's reasons for non-compliance with the Board's order had already been stated in various pleadings filed by petitioner, and particularly in petitioner's exceptions to said Intermediate Report. The proceedings before the Board referred to in this paragraph and in paragraphs 8 to 12 inclusive will be herein referred to as the "complaint proceedings".

14. The order of the Board, dated March 30, 1942, and the purported findings of fact and conclusions of law upon which such order is based, and each and every order and proceeding taken or made by the Board as a basis or predicate for said order, are, and each of the same is erroneous, invalid, void, contrary to law and prejudicial to this petitioner, and in this connection petitioner alleges and specifies the following errors by which petitioner is aggrieved.

15. There is no substantial evidence to support the Board's finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding were and are employees within the meaning of the National Labor Relations Act.

16. There is no substantial evidence to support the Board's finding (Findings of Fact II) that the Union admitted or admits to membership employees of petitioner.

17. There is no substantial evidence to support the Board's finding (Findings of Fact III, A, 2; III, A, 3) that the Union was the duly designated bargaining representative of a majority of petitioner's employees in the unit referred to in said order, and that the Union was and is the exclusive representative for the purposes of collective bargaining of all employees of petitioner in such unit.

18. There is no substantial evidence to support the Board's finding (Findings of Fact III, A, 3) that this petitioner on August 12, 1941, and at all times thereafter interfered with, restrained and coerced its employees in the exercise of rights guaranteed under the National Labor Relations Act.

19. There is no substantial evidence to support the Board's finding (Findings of Fact III, A, 1) that full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, constituted or constitute

a unit appropriate for the purposes of collective bargaining, and that such unit insures to employees of petitioner the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the National Labor Relations Act.

20. The Board's Trial Examiner, at the hearing of November 12, 1941, erroneously excluded evidence tending to establish a fact contrary to the Board's finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding are employees within the meaning of the National Labor Relations Act, by rejecting an offer in evidence of certain transcripts of testimony and findings and awards in proceedings before the Industrial Accident Commission of the State of California, the same being Los Angeles Evening Herald and Express rejected Exhibits 1, 2, 3, 4 and 5 inclusive.

21. The Board made its finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding were and are employees within the meaning of the National Labor Relations Act solely upon evidence introduced at the hearing in said representation proceedings (June 10, 1940 to June 27, 1940), and the Board's prior determination of such employee status in said representation proceedings in the Board's decision and direction of elections, dated January 9, 1941. From such decision and direction of elections it will appear that the Board, in determining that such newsboys were

employees of this petitioner, has considered and relied upon evidence received at such hearing in said representation proceedings which was and is wholly inapplicable to the full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, inasmuch as such evidence related solely to the activities and status of newsboys engaged in street sales of other newspapers published by other parties.

22. There is no substantial evidence to support the Board's finding (Findings of Fact, IV) that the activities of petitioner, occurring in connection with its operations referred to in the Board's findings, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

23. The Board erred in its conclusion of law (1) that the Union is a labor organization within the meaning of the National Labor Relations Act.

24. The Board erred in its conclusion of law (2) that all full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, were employees of petitioner and constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of the National Labor Relations Act.

25. The Board erred in its conclusion of law (4) that the Union has been and still is the exclusive representative of all employees in such unit for the purposes of collective bargaining within the meaning of the National Labor Relations Act.

26. The Board erred in its conclusion of law (5) that by refusing to bargain collectively with the Union as such exclusive representative, petitioner has engaged in or is engaging in unfair labor practices within the meaning of the National Labor Relations Act.

27. The Board erred in its conclusion of law (6) that petitioner has interfered with, restrained and coerced its employees in the exercise of rights guaranteed in the National Labor Relations Act, and that petitioner has engaged in and is engaging in unfair labor practices within the meaning of the National Labor Relations Act.

28. The Board erred in its conclusion of law (7) that such unfair labor practices are unfair labor practices affecting commerce within the meaning of the National Labor Relations Act.

29. The Board's finding (Findings of Fact III, A, 3) that the newsboys involved in this proceeding were and are petitioner's employees within the meaning of the National Labor Relations Act was and is contrary to the evidence that such newsboys purchased their merchandise at a wholesale price and for their remuneration depended upon profit

from their retail sales, the volume of such profit being dependent upon their success in conducting such retail sales; that the methods used in attracting customers were determined by the newsboys themselves; that the question whether credit should be extended to customers was determined by each newsboy upon his own initiative, and that he stood all such credit losses; that the newsboys hired others to assist them and made a profit in so doing; that the newsboys bought and sold locations between themselves at large prices; that the right to sell competing publications at the same time was exercised by such newsboys, and that no allocation of time spent as between the competing publications could be made; that the right to cooperate with newsboys selling competing publications was exercised by the newsboys for their mutual benefit; that the newsboys were and are known to petitioner only as sales outlets and occupied no different position than that occupied by other retail sellers of petitioner's newspapers, such as drug stores, cigar stands and news stands; as well as other evidence showing that such newsboys were independent contractors or independent merchandisers as distinguished from employees. Said finding is also in disregard of and contrary to decisions of the highest courts of California and other states (heretofore relied upon by petitioner in its business and operations) holding and declaring newsboys operating under the same or similar conditions to be independent contractors or independent merchandisers and not employees.

30. Petitioner has repeatedly and consistently contended that the newsboys involved in this proceeding were not and are not its employees within the meaning of the National Labor Relations Act, such contention having been made before the Board in petitioner's answer to and motion to dismiss the petition for investigation and certification of representatives, and its objections to the validity of direction of elections and exceptions to the same and blanket objection to the ballot, and its objections to the conduct of the ballot and to the election report, in said representation proceedings, and its answer to and motion to dismiss the complaint, and its exceptions to the Trial Examiner's Intermediate Report in said complaint proceeding.

31. The Board's finding (Findings of Fact III, A, 1) that all full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, constituted and constitute a unit appropriate for the purposes of collective bargaining, was and is contrary to evidence that this petitioner's newspaper was and is sold on the streets by many newsboys who do not come within this limited and arbitrary definition of appropriate unit. There was no evidence showing that such unit was designated for the purposes of joining a single group of alleged employees having a mutual interest in the objects of collective bargaining, or that the newsboys within such unit had or have any community interest distinguishable from newsboys

who are not included therein, or that the newsboys within such unit perform a different type or character of work from that performed by newsboys excluded therefrom, or that they have different skill or qualifications from those of the newsboys who are excluded, or that their experience or training is different from the experience or training of the newsboys excluded, or that their duties and responsibilities are different from those of the newsboys excluded.

32. Petitioner has repeatedly and consistently contended that the designated bargaining unit was not an appropriate unit, such contention having been made before the Board in petitioner's objections to validity of direction of elections and exceptions to the same and blanket objection to the ballot, and its objections to the conduct of the ballot and to the election report, in said representation proceedings, and its answer, and its exceptions to the Trial Examiner's Intermediate Report in said complaint proceedings.

33. The Board's finding (Findings of Fact, IV) that the activities of petitioner occurring in connection with its operations have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce, was and is contrary to evidence that the full-time newsboys and checkmen engaged to sell the Herald within

Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, (the only newsboys involved in this proceeding) had nothing to do with interstate sales of petitioner's newspaper, and that their activities did not and could not have any relation to, newspapers sent out of the state, and that a dimunition or complete cessation of street sales in Los Angeles would not diminish the volume of interstate sales. A refusal of petitioner to bargain with the Union would not increase or diminish or burden in any manner or affect the volume of interstate sales of petitioner's newspaper, or the volume of raw material received by it from other states incident to the production of its newspaper, e. g., newsprint, mats, news service, and material pertaining to features and advertising, or the volume of intangibles, e. g., news service and news items sent by it from this state into interstate commerce.

34. Petitioner has repeatedly and consistently contended that such activities have not had and do not have any close or intimate or substantial relation to trade, traffic and commerce among the several states, or tend to lead to labor disputes burdening or obstructing commerce or the free flow of commerce, such contention having been made before the Board in petitioner's answer to and motion to dismiss the petition for investigation and certification of representatives, and its objections to the validity of direction of elections and exceptions to the same and blanket objection to the ballot, and

its objections to the conduct of the ballot and to the election report, in said representation proceedings, and its answer to and motion to dismiss the complaint, and its exceptions to the Trial Examiner's Intermediate Report in said complaint proceedings.

35. There is no substantial evidence to support the Board's finding (III) in its decision and direction of elections, dated January 9, 1941, that the newsboys here involved are within the definition of employees as that term is used in the National Labor Relations Act, or its finding therein (IV) that questions have arisen concerning the representation of employees of petitioner, or its finding therein (V) that the questions concerning representation which have arisen have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce, or its finding therein (VI) that all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, constitute a unit appropriate for the purposes of collective bargaining, and the Board's conclusions of law in said decision and direction of elections, based upon said findings, are erroneous.

36. There is no substantial evidence to support the Board's finding in its certification of repre-

sentatives, dated May 17, 1941, that an election was conducted on May 14, 1941, among employees of petitioner, and the Board's certification that the Union has been designated and selected as a representative for the purposes of collective bargaining by a majority of all employees of petitioner within a certain group, and that all full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys, are employees of petitioner, and that the Union is the exclusive representative of all such employees for the purposes of collective bargaining, is erroneous.

37. The Board erred in denying the motion of petitioner in said representation proceedings to dismiss the petition for investigation and certification of representatives.

38. The Board erred in overruling petitioner's challenge to the vote of each and every voter or person attempting to vote at the election ordered by the National Labor Relations Board to be held on May 14, 1941, which said written challenge was dated and filed May 14, 1941.

39. The Board erred in overruling petitioner's "Objections to the Conduct of the Ballot and to the Election Report".

40. The Board erred in denying the motion of petitioner to dismiss the complaint in said complaint proceedings.

41. The Board erred in its finding and ruling that the exceptions filed by this petitioner on January 5, 1942, to the Intermediate Report of the Trial Examiner in said complaint proceedings are without merit insofar as the same are inconsistent with the Board's findings of fact, conclusions of law, and order, dated March 30, 1942.

42. Said decision and direction of elections, dated January 9, 1941, exceeds the authority and jurisdiction conferred upon the Board by the National Labor Relations Act, and deprives this petitioner of its property without due process of law and thereby violates Article V of the Amendments (being the Fifth Amendment) to the Constitution of the United States, and Article I, Section 13, of the Constitution of California.

43. Said order of the Board, dated March 30, 1942, and each and every part thereof, and each and every order and proceeding taken or made by the Board as a basis or predicate therefor, or upon which said order of March 30, 1942, is or may be based, exceed the authority and jurisdiction conferred upon the Board by the National Labor Relations Act, and deprive this petitioner of its property without due process of law and thereby violate Article V of the Amendments (being the Fifth Amendment) to the Constitution of the United States, and Article I, Section 13 of the Constitution of California.

Wherefore, petitioner respectfully petitions and prays:

1. That respondent be required, in conformity with law, to certify to this Honorable Court a transcript of the entire record in these proceedings, including all pleadings, testimony and evidence upon which said order of March 30, 1942, was entered, all papers filed with the Board by petitioner in these proceedings, and all findings, conclusions and orders of the Board affecting this petitioner; and including also the Board's certification and the entire record of its investigation under section 9 (c) of the National Labor Relations Act, herein referred to as the representation proceedings, together with all pleadings, testimony and evidence, and all papers filed with the Board in such representation proceedings, and all findings, conclusions and orders of the Board affecting petitioner therein; and

2. That the Board's findings, conclusions and order of March 30, 1942, as well as all proceedings and orders taken and made by or before the Board as a basis or predicate for said order of March 30, 1942, be reviewed by this Honorable Court; that said order of March 30, 1942, be set aside, vacated and annulled in so far as it relates to this petitioner; and that the complaint against this petitioner be dismissed; and

3. That this Honorable Court exercise its jurisdiction over the parties and the subject matter of this petition, and grant to petitioner such other

and further relief in the premises as the rights and equities of the cause may require.

[Seal] HEARST PUBLICATIONS,
INCORPORATED
By FRANK F. BARHAM
Vice-President
By LAURENCE MITCHELL
Secretary
FLINT & MAC KAY,
H. S. MAC KAY, Jr.,
EDWARD L. COMPTON, and
DONALD W. HAMBLIN
By EDWARD L. COMPTON
Its Attorneys

(Duly verified.)

[Endorsed]: Filed Apr. 24, 1942.

[Title of Circuit Court of Appeals and Cause No. 10115.]

AFFIDAVIT OF SERVICE BY MAIL

State of California,
County of Los Angeles—ss.

Edward J. Gain, being first duly sworn, deposes and says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled cause; that affiant's business address is 1232 Rowan

Building in the City of Los Angeles, County of Los Angeles, State of California.

That on the 27th day of April, 1942, affiant served a true and correct copy of "Petition for Review of Final Order of National Labor Relations Board" in the above entitled and numbered matter, heretofore and on April 24, 1942, filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, at San Francisco, California, and "Notice of Filing of Petition for Review of Final Order of National Labor Relations Board," a true and correct copy of which is attached hereto, marked "Exhibit A," and by reference incorporated herein, by placing said copy of "Petition for Review of Final Order of National Labor Relations Board" and said "Notice of Filing of Petition for Review of Final Order of National Labor Relations Board" in an envelope addressed as follows:

"National Labor Relations Board,
Washington, D. C."

and by then sealing said envelope and depositing the same, registered mail, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California; that there is delivery service by United States mail at the place so addressed and there is regular communication by mail between the place of mailing and the place so addressed.

That on the 27th day of April, 1942, affiant served a true and correct copy of said "Petition for Review of Final Order of National Labor Relations"

and a true and correct copy of said "Notice of Filing of Petition for Review of Final Order of National Labor Relations Board" on William R. Walsh, Director, National Labor Relations Board, Twenty-first Region, by placing said true copies in an envelope addressed as follows:

"William R. Walsh, Director,
National Labor Relations Board,
Twenty-first Region,
U. S. Post Office and Courthouse,
Los Angeles, California,"

and by then sealing the said envelope and depositing the same, registered mail, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California, where is located the offices of said William R. Walsh, Director, National Labor Relations Board, Twenty-first Region. That there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

EDWARD J. GAIN

Subscribed and sworn to before me this 27th day of April, 1942.

[Seal] MARTHA S. DuBOIS,
Notary Public in and for the
County of Los Angeles,
State of California.

EXHIBIT A

[Title of Circuit Court of Appeals and Cause No. 10115.]

NOTICE OF FILING OF PETITION FOR REVIEW OF FINAL ORDER OF NATIONAL LABOR RELATIONS BOARD

To the National Labor Relations Board, and to William R. Walsh, Director, Twenty-first Region, National Labor Relations Board:

You, and each of you, will please take notice that Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department) filed on April 24, 1942, in the office of the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, San Francisco, California, its certain "Petition for Review of Final Order of National Labor Relations Board," numbered and captioned as above, seeking a review of that certain Final Order of the National Labor Relations Board, dated March 30, 1942, and made in that certain matter, entitled and numbered in the files of the National Labor Relations Board as follows: "In the Matter of Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., Case No. C-2023," a copy of which said "Petition for Review of Final Order of National Labor Relations Board" is served herewith, and to which reference is hereby made for further particulars.

Dated at Los Angeles, California, this 27th day of April, 1942.

FLINT & MacKAY,
H. S. MacKAY, JR.,
EDWARD L. COMPTON, and
DONALD W. HAMBLIN
By EDWARD L. COMPTON,
Attorneys for Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department)

[Endorsed]: Filed Apr. 29, 1942.

[Title of Circuit Court of Appeals and Cause No. 10115.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD AND REQUEST FOR ENFORCEMENT

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, hereinafter referred to as the Board, and pursuant to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, et seq.), hereinafter referred to as the Act, files this answer to the petition to review and set aside filed herein and this request for enforcement of the Board's order.

1. Answering the allegations of paragraphs 1, 29, 31, and 33 of the petition for review, the Board prays reference to the certified record of the pro-

ceeding before the Board filed herein, for a full and exact statement of the findings of fact, conclusions of law, and order of the Board. To the extent that said allegations relate to matters not in issue in the proceeding before the Board and not therefore covered by or dealt with in the findings of fact, conclusions of law, and order of the Board, dated March 30, 1942, the Board alleges that they are irrelevant and immaterial to the issues in this case and neither admits nor denies them; to the extent that the said allegations relate to matters in issue in the proceeding before the Board and conflict with said findings of fact, conclusions of law, and order, the Board denies them.

2. The Board admits the allegations of paragraph 2 of the petition for review.

3. Answering the allegations contained in paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 30, 32, and 34 of said petition for review, the Board prays reference to the certified transcript of the entire record of the proceedings before the Board filed herein for a full and exact statement of the pleadings, findings of fact, conclusions of law, and order of the Board, all of the evidence stated in this matter, and all other proceedings had in this matter before the Board.

4. The Board denies each and every allegation of error contained in paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 35, 36, 37, 38, 39, 40, 41, 42, and 43 of said petition for review. Further answering, the Board avers that its said order is valid and proper in all respects.

Wherefore, having answered each and every allegation contained in said petition to review, the Board prays this Honorable Court that said petition be denied insofar as it prays that the order of the Board be set aside.

Further Answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests this Honorable Court for the enforcement of its said order against petitioner dated March 30, 1942, in Case No. C-2023, entitled, "In the Matter of Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department) and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O."

In support of this request for enforcement of its said order, the Board respectfully shows as follows:

(a) Petitioner is a California corporation with its principal office and place of business in San Francisco, California, within this judicial district. This Court has jurisdiction of said petition to review herein and this request for enforcement by virtue of Section 10 (e) and (f) of the National Labor Relations Act.

(b) Upon the proceedings had in Cost No. C-2023 before the Board, including, without limitation, complaint, answer, hearing for the purpose of taking testimony, trial examiner's intermediate report, exceptions filed thereto, and oral argument thereon, as more fully shown by the entire record in Case No. C-2023 certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on March 30, 1942, duly stated its

findings of fact and conclusions of law and issued an order directed to petitioner, its officers, agents, successors and assigns, as follows:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of its employees who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys.

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of its employees who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order and (2) that the respondent will take the affirmative action set forth in paragraph 2(a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(c) The Board's decision (comprising its findings of fact and conclusions of law) and order were duly served upon petitioner on March 30, 1942.

(d) Pursuant to Section 10 (e) and (f) of the National Labor Relations Act, the Board is certifying and filing with this Court the transcript of the entire record in Case No. C-2023 before the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and the entire record in said proceedings before the Board to be served upon petitioner and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and proceedings set forth in the entire record of said proceedings, and upon the order made thereon, a decree denying the petition to

review and enforcing in whole said order of the Board set forth above and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 5th day of June, 1942.

ERNEST A. GROSS,
Associate General Counsel,
National Labor Relations Board.

(Duly verified.)

[Endorsed]: Filed June 10, 1942.

[Title of Circuit Court of Appeals and Cause No. 10115.]

STATEMENT OF POINTS UPON WHICH PETITIONER INTENDS TO RELY

To:

The Honorable the Justices of the United States Circuit Court of Appeals for the Ninth Circuit:

Honorable Paul P. O'Brien, Clerk of the Above Entitled Court:

National Labor Relations Board:

Pursuant to the provisions of Rule 19, Paragraph 6, of the Rules of Practice of this Court, Petitioner, Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department), states that the points upon which it intends to rely in this Court in this proceeding are as follows:

1. There is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that the newsboys engaged in the street sale of the Los Angeles Evening Herald and Express, the newspaper published by petitioner, in so far as such vending activities are concerned, were or are employees of petitioner.

2. The relationship of petitioner with newsboys engaged in the street sale of the Los Angeles Evening Herald and Express, in so far as such vending activities are concerned, is not subject to the jurisdiction of the National Labor Relations Board.

3. There is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that newsboys engaged in the street sale of the Los Angeles Evening Herald and Express, included within the unit claimed by the Board to be an appropriate unit, in so far as their said vending activities are concerned, were or are employees of petitioner.

4. There is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that the claimed unit was or is an appropriate unit.

5. There is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that questions have arisen concerning the representation of employees of this petitioner.

6. There is no substantial evidence supporting the finding or conclusion of the National Labor Relations Board that the activities of petitioner involved in this proceeding occurring in connection with its operations have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of the National Labor Relations Act.

Respectfully submitted,

HEARST PUBLICATIONS, INCORPORATED, (LOS ANGELES EVENING HERALD AND EXPRESS DEPARTMENT)

By FLINT & MacKAY,
H. S. MacKAY, JR.,
EDWARD L. COMPTON, and
DONALD W. HAMBLIN,

By EDWARD L. COMPTON,
Attorneys for Petitioner.

[Title of Circuit Court of Appeals and Cause No. 10115.]

AFFIDAVIT OF SERVICE BY MAIL OF COPY OF STATEMENT OF POINTS UPON WHICH PETITIONER INTENDS TO RELY

United States of America,
State of California,
County of Los Angeles—ss.

B. B. De Klotz, being first duly sworn, deposes and says:

That affiant is a citizen of the United States, over the age of eighteen years, a resident of Los Angeles County and not a party to the within and above entitled proceeding; that affiant's business address is 1232 Rowan Building, Los Angeles, California. On July 13, 1942, affiant served a copy of the attached "Statement of Points upon Which Petitioner Intends to Rely" on National Labor Relations Board by placing a true copy of said "Statement of Points upon Which Petitioner Intends to Rely" in an envelope addressed to National Labor Relations Board at its office address, viz:

"National Labor Relations Board,
Washington, D. C."

and on said date affiant served a copy of said "Statement of Points upon Which Petitioner Intends to Rely" on William R. Walsh, Regional Director, National Labor Relations Board, Twenty-first Re-

gion, by placing a true copy of said "Statement of Points upon Which Petitioner Intends to Rely" in an envelope addressed to William R. Walsh at his office address, viz:

"William R. Walsh, Regional Director,
Twenty-first Region,
National Labor Relations Board,
U. S. Post Office and Courthouse,
Los Angeles, California."

Affiant then sealed each of said envelopes and deposited the same, with registered postage thereon fully prepaid, in the United States mails at Los Angeles, California. There is a delivery service by United States mail at the places so addressed and there is a regular communication by mail between the place of mailing and the places so addressed.

B. B. DE KLOTZ

Subscribed and sworn to before me this 13th day of July, 1942.

[Seal] MARTHA S. DuBOIS,
Notary Public in and for the
County of Los Angeles,
State of California.

[Endorsed]: Filed July 14, 1942.

United States Circuit Court of Appeals for the Ninth Circuit

No. 10123

THE TIMES-MIRROR COMPANY, a corporation,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION TO REVIEW ORDER OF NATIONAL LABOR RELATIONS BOARD

To the Honorable the Judges of the United States Circuit Court of Appeals, for the Ninth Circuit:

The Times-Mirror Company, a corporation, publisher of Los Angeles Times, a daily and Sunday morning newspaper, being a party aggrieved by a certain final order entered March 30, 1942, by National Labor Relations Board (hereafter called "Board") in a proceeding instituted by the Board against petitioner, appearing and designated upon the records of the Board as "In the Matter of The Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., Case No. C-2024", respectfully petitions this Honorable Court for a review of said order, and in support of its petition your petitioner respectfully shows:

1. Petitioner is and at all times herein mentioned was a corporation organized and existing under the

laws of the State of California, maintaining its printing plant and principal place of business in the City of Los Angeles, State of California, within the judicial circuit as above captioned. In the aforementioned proceeding, to wit, Case No. C-2024, it was alleged in the Complaint issued by the Board, and the Board thereafter found, that petitioner engaged in unfair labor practices (refusal to bargain collectively with the designated representative of newsboys selling the Los Angeles Times) in the City of Los Angeles, State of California.

This court has jurisdiction of this petition by virtue of Sec. 10(f) of the National Labor Relations Act (29 USCA 160(f); 49 Stat. 449) (hereafter called "Act").

2. Upon filing by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., an alleged labor union (hereafter called "Newsboys Union"), of a Petition for Investigation and Certification of Representatives Pursuant to Section 9(c) of the Act, the Regional director of the Board, Twenty-first Region, did on April 12, 1940, issue a notice of hearing to be held May 16, 1940, and thereafter and on May 15, 1940, said Regional Director issued an amended notice of hearing advising that said hearing would be held June 10, 1940. Said proceeding is designated upon the records of the Board as "In the Matter of Times Mirror Co. and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O", Case No. R-1925, and is hereafter called the "Certification Case."

3. Thereafter and on June 4, 1940, petitioner filed with said Regional Director a Motion to Dismiss Petition for Investigation, and an Answer thereto. Said Motion to Dismiss Petition for Investigation challenged the jurisdiction of the Board on the grounds that (a) the members of the Newsboys Union are not employees of petitioner; (b) members of the Newsboys Union are independent contractors; (c) no question affecting commerce had arisen or can arise concerning the representation of the alleged employees; (d) the Board has no jurisdiction over the petitioner or the business conducted by it; (e) the relations of petitioner with the alleged employees are not subject to the jurisdiction of the Board; and (f) no claimed labor dispute between petitioner and the alleged employees can affect commerce within the meaning of the Act.

4. On June 4, 1940, said Newsboys Union filed an Amended Petition for Investigation and Certification, to which amended Petition it was stipulated that said Motion to Dismiss and said Answer of petitioner theretofore filed should be deemed applicable.

5. Said Certification Case came on for hearing at Los Angeles, California, on June 10, 1940 before Thomas H. Kennedy, Trial Examiner, and proceeded from day to day until June 27, 1940.

6. On January 9, 1941, the Board made and entered its Decision and Direction of Elections in said Certification Case. In said Decision and Direction of Elections the Board determined that the news

vendors in question were employees of petitioner. The Board denied petitioner's Motion to Dismiss Petition for Investigation, and directed an election to be held for the purpose of determining representatives among

> "All newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys * * * to determine whether or not said employees desire to be represented by Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., for the purposes of collective bargaining."

7. On or about May 9, 1941, petitioner filed with the Regional Director of the Board, Twenty-first Region, its "Objections to Validity of Direction of Elections and Exceptions to the Same; Blanket Objection to the Ballot of Each and Every Person Participating in said Election (Times Unit)", asserting as grounds therefor the same grounds assigned in support of its said Motion to Dismiss Petition for Investigation. On May 21, 1941, the Board made and entered its Order overruling said Objections and Exceptions of petitioner.

8. On May 15, 1941, an election was held as directed by said Decision and Direction of Elections, and thereafter on June 2, 1941, the Regional Director of said Board, Twenty-first Region, issued his Election Report finding as follows:

Total on eligibility list	457
Total ballots cast	309
Total ballots challenged	108
Total blank ballots	2
Total void ballots	2
Total ballots not counted	112
Total votes counted	197
Total votes for the Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.	131
Total votes against Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.	66

9. On June 6, 1941, petitioner filed with the Regional Director of the Board, Twenty-first Region, its Objections to the Conduct of the Ballot and to the Election Report, and thereafter on June 12, 1941, said Regional Director issued his Report on Objections overruling each of the objections made by petitioner.

10. On July 30, 1941, the Board made and entered its Supplemental Decision and Certification of Representatives sustaining and affirming the rulings of the Regional Director overruling petitioner's Objections to the Conduct of the Ballot and to the Election Report, and in said Supplemental Decision certified

> "* * * that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been designated and selected by a majority of all employees of The Times-Mirror Company, Los

Angeles, California, who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, excluding temporary newsboys, as their representative for the purposes of collective bargaining, and * * * is the exclusive representative of all such employees for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment."

11. On or about September 3, 1941, said Newsboys Union filed a charge against petitioner, pursuant to Sec. 10(b) of the Act, alleging that petitioner was engaged in an unfair labor practice in that it has refused to recognize and bargain with said Newsboys Union. Thereafter on October 25, 1941, said Board, by its Regional Director, Twenty-first Region, issued a Complaint against petitioner in a proceeding designated upon the records of the Board as "In the Matter of The Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O.", Case No. C-2024 (XXI-C-1843), and also issued a Notice of Hearing of said charge and complaint before a Trial Examiner of the Board, to be held November 10, 1941. This proceeding is hereafter called the "Complaint Case."

12. November 4, 1941, petitioner filed with said Regional Director its Motion to Dismiss Complaint, and also an Answer thereto. The grounds of said Motion to Dismiss were the same as those assigned

in support of petitioner's Motion to Dismiss Petition for Investigation ("Certification Case").

13. Said matter came on for hearing and was heard at Los Angeles, California, on November 10, 1941, and November 12, 1941, before W. P. Webb, Trial Examiner.

14. On December 4, 1941, said Trial Examiner made and filed his Intermediate Report. To said Intermediate Report petitioner duly and regularly filed its Exceptions (and Brief in support thereof) as permitted by Article II, Section 33, of National Labor Relations Board Rules and Regulations—Series 2, as amended. On January 22, 1942, oral argument of said Exceptions to said Intermediate Report was had before the Board convened at Washington, D. C.

15. On March 30, 1942, the Board entered its Decision and Order in said Complaint Case. Said Order, for a review of which this petition is filed, is as follows:

> "Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, * * * the National Labor Relations Board hereby orders that the respondent, The Times-Mirror Company, and its officers, agents, successors, and assigns, shall:
>
> 1. Cease and desist from:
>
> (a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of its employees who are news-

boys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of its employees who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, with respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days

from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith."

Errors in the Decision in the Certification Case.

16. The Decision of the Board dated January 9, 1941, in the Certification Case (No. R-1925) was erroneous in the following respects:

(a) In denying petitioner's Motion to Dismiss Petition for Investigation.

(b) Finding II is not supported by substantial evidence and is erroneous as a conclusion of law. It reads:

"Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership all persons in the metropolitan area of Los Angeles employed in the general distribution and sale of newspapers, magazines, and periodicals, except those who have the power to hire and discharge."

(c) That part of Finding III reading:

"Accordingly, we find that the newsboys in-

volved in this proceeding are employees within the meaning of Section 2 (3) of the Act."

is not supported by substantial evidence and is erroneous as a conclusion of law.

(d) That part of Finding IV reading:

"We find that questions have arisen concerning the representation of employees of the Companies."

is not supported by substantial evidence and is erroneous as a conclusion of law.

(e) Finding V is not supported by substantial evidence and is erroneous as a conclusion of law. It reads:

"We find that the questions concerning representation which have arisen, occurring in connection with the operations of the Companies described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce."

(f) That part of Finding VI reading:

"* * * we find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining: * * * all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys * * *. We further find that said units will

insure to employees of the Companies the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act."

is not supported by substantial evidence and is erroneous as a conclusion of law.

(g) That part of Finding VII reading:

"At the hearing lists prepared by * * * the Times were introduced in evidence purporting to show the following approximate current number of newsboys employed * * *:

* * * * * * *

"Times ..... 627"

is not supported by substantial evidence and is erroneous as a conclusion of law.

(h) The Board's conclusions of law numbered 1 and 2(c) are erroneous. They read:

"1. Questions affecting commerce have arisen concerning the representation of employes of the Companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

"2. The following employees of * * * The Times-Mirror Company * * * of Los Angeles, California, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act:

(c) all newsboys engaged in the street sale of the Times at established spots 4 or more

hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys * * *."

17. The Board erred in overruling (on May 21, 1942) petitioner's "Objections to Validity of Direction of Elections and Exceptions to the Same; Blanket Objection to the Ballot of Each and Every Person Participating in Said Elections (Times Unit)."

18. The Supplemental Decision and Certification of Representatives of the Board, dated July 30, 1941, in the Certification Case, was erroneous in the following respects:

(a) In overruling petitioner's "Objections to the Conduct of the Ballot and to the Election Report."

(b) In certifying

"that Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been designated and selected by a majority of all employees of The Times-Mirror Company, Los Angeles, California, who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, excluding temporary newsboys, as their representative for the purposes of collective bargaining * * * in respect to rates of pay, wages, hours of employment, and other conditions of employment."

Errors in the Decision and Order in the Complaint Case.

19. The Decision and Order of the Board, dated March 30, 1942, in the Complaint Case (No. C-2024), herein sought to be reviewed, was erroneous in the following respects:

(a) In affirming the ruling of the Trial Examiner denying petitioner's Motion to Dismiss Complaint.

(b) In affirming the ruling of the Trial Examiner rejecting petitioner's offer in evidence of certain exhibits designated in the record herein as "The Times-Mirror Company's Rejected Exhibits 1, 2-A, 2-B, 3, 4-A, 4-B and 5."

(c) Finding II is not supported by substantial evidence and is erroneous as a conclusion of law. It reads:

> "Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization chartered by the Congress of Industrial Organizations admitting to membership employees of the respondents."

(d) That part of Finding III (A) (1) reading:

> "We now find * * * that * * * all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, constitute units appropriate for the purposes of collective bargaining with respect to rates of

pay, wages, hours of employment, and other conditions of employment * * *."

is not supported by substantial evidence and is erroneous as a conclusion of law.

(e) That part of Finding III (A) (2) reading:

"* * * on and at all times after July 30, 1941, with respect to * * * the Times, the Union was the duly designated bargaining representative of a majority of the employees in each of the aforesaid appropriate units * * * for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment."

is not supported by substantial evidence and is erroneous as a conclusion of law.

(f) That part of Finding III (A) (3) reading:

"* * * we hold that the newsboys are employees within the meaning of Section 2 (3) of the Act.

"We find * * * that the * * * Times * * * has * * * refused to bargain collectively with the Union as the exclusive representative of its employees in appropriate units and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

is not supported by substantial evidence and is erroneous as a conclusion of law.

(g) Finding IV is not supported by substantial evidence and is erroneous as a conclusion of law.

(h) The Board has failed to find or declare by

finding of fact or conclusion of law, or otherwise, on the issue raised by the Seventh Separate and Further Defense in the Answer of petitioner. Said defense reads:

> "The relations of respondent with the alleged employees (said newsboys selling the Los Angeles Times) are not subject to the jurisdiction of said Board."

(i) The Board has failed to find or declare by finding of fact or conclusion of law, or otherwise, on the issue raised by the Eighth Separate and Further Defense in the Answer of petitioner. Said defense reads:

> "No claimed labor dispute between respondent and said alleged employees (said newsboys selling the Los Angeles Times) can affect commerce within the meaning of the National Labor Relations Act."

(j) The Board's Conclusions of Law numbered 1, 3, 4, 5, 6 and 7 are erroneous. They read:

> "1. Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., is a labor organization within the meaning of Section 2 (5) of the Act.
>
> "3. The following employees of The Times-Mirror Company of Los Angeles, California, at all times material herein, constituted and now constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act: all newsboys engaged in the street sale of

the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys.

"4. Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., has been at all times material herein and still is the exclusive representative of all employees in each of the aforesaid units for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

"5. By refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of all its employees in an appropriate unit, each of the respondents has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

"6. By interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

"7. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act."

Wherefore, your petitioner prays:

1. That respondent, National Labor Relations Board, be required, in conformity with law, to cer-

tify and file with this Honorable Court a full, true and correct copy of the transcript of record and the proceedings in both the Certification Case (No. R-1925) herein referred to, and in the Complaint Case (No. C-2024), being the proceeding wherein the order herein sought to be reviewed was made.

2. That the Findings, Conclusions of Law and Order of Said Board in the Complaint Case (No. C-2024) be reviewed by this court and that said Order of March 30, 1942, in said Complaint Case be set aside, vacated, and annulled.

3. For such other and further relief as the court may deem proper in the premises.

Respectfully submitted,

THE TIMES-MIRROR COMPANY,

Petitioner.

T. B. COSGROVE,

F. J. O'NEIL,

F. B. YOAKUM, JR.,

By T. B. COSGROVE,

Its Attorneys.

(Duly verified.)

[Endorsed]: Filed May 1, 1942.

[Title of Circuit Court of Appeals and Cause No. 10123.]

AFFIDAVIT OF SERVICE BY MAIL OF COPY OF PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD, AND NOTICE OF FILING PETITION FOR REVIEW.

United States of America,
State of California,
County of Los Angeles—ss.

Warren E. Slaughter, being duly sworn, deposes and says:

Affiant is a citizen of the United States, over eighteen years of age, a resident of Los Angeles County, and not a party to the within and above entitled proceeding. Affiant's business address is 1031 Rowan Building, Los Angeles, California. On May 4, 1942, affiant served a copy of the Petition for Review filed in this court in the matter as above entitled, and a Notice of Filing of said petition (copy of which is attached hereto), on National Labor Relations Board by placing a true copy of said Petition for Review and said Notice of Filing of same in an envelope addressed to National Labor Relations Board at its office address, viz., "National Labor Relations Board, Washington, D. C."

and on said date affiant served a copy of said Petition for Review and a copy of said Notice of Filing on William R. Walsh, Regional Director National Labor Relations Board, Twenty-first Region, by

placing true copies of said documents in an envelope addressed to William R. Walsh at his office address, viz.,

"William R. Walsh, Regional Director
National Labor Relations Board,
United States Post Office and Courthouse, Los Angeles, California."

Affiant then sealed each of said envelopes and deposited the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. There is a delivery service by United States mail at the places so addressed and there is a regular communication by mail between the place of mailing and the places so addressed.

WARREN E. SLAUGHTER

Subscribed and sworn to before me this 4th day of May, 1942.

[Seal] ANNABEL SMITH
Notary Public in and for the County of Los Angeles, State of California.

[Title of Circuit Court of Appeals and Cause No. 10123.]

NOTICE OF FILING PETITION FOR REVIEW IN CIRCUIT COURT OF APPEALS

To National Labor Relations Board, Washington, D. C., and to William R. Walsh, Regional Director thereof, Twenty-first Region:

You and each of you will please take notice that

on May 1, 1942, The Times-Mirror Company filed in the Circuit Court of Appeals, for the Ninth Circuit, its Petition for Review of that certain order of National Labor Relations Board dated March 30, 1942, in the proceeding entitled on your records as "In the Matter of The Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., Case No. C-2024"; said petition is entitled and numbered as above captioned.

For further particulars you are referred to said petition, copy of which is attached hereto and served herewith.

Dated at Los Angeles, California, this 4th day of May, 1942.

T. B. COSGROVE
F. J. O'NEIL
F. B. YOAKUM, Jr.
By F. B. YOAKUM, Jr.
Attorneys for Petitioner

[Title of Circuit Court of Appeals and Cause No. 10123.]

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD AND REQUEST FOR ENFORCEMENT

To The Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the National Labor Relations Board, hereinafter referred to as the Board, and pursuant

to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, et seq.), hereinafter referred to as the Act, files this answer to the petition to review and set aside filed herein and thjs request for enforcement of the Board's order.

1. The Board admits the allegations concerning petitioner's business and this Court's jurisdiction contained in paragraph 1 of said petition for review.

2. Answering the allegations contained in paragraph 1 concerning the Board's complaint and findings, and the allegations contained in paragraphs 2 to 15, inclusive, of said petition for review, the Board prays reference to the certified transcript of the entire record of proceedings before the Board filed herein for a full and exact statement of the pleadings, findings of fact, conclusions of law, and order of the Board, all of the evidence stated in this matter, and all other proceedings had in this matter before the Board.

3. The Board denies each and every allegation of error contained in paragraph 16, subdivisions (a) to (h) inclusive, in paragraph 17, in paragraph 18, subdivisions (a) to (b) inclusive, and in paragraph 19, subdivisions (a) to (j) inclusive, of said petition for review. Further answering, the Board avers that its order is valid and proper in all respects.

Wherefore, having answered each and every allegation contained in said petition to review, the Board prays this Honorable Court that said peti-

tion be denied insofar as it prays that the order of the Board be set aside.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests this Honorable Court for the enforcement of its said order against petitioner dated March 30, 1942, in Case No. C-2024, entitled "Matter of The Times-Mirror Company and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O."

In support of this request for enforcement of its said order, the Board respectfully shows as follows:

(a) Petitioner is a California corporation having its principal place of business in Los Angeles, California, within this judicial circuit. This Court has jurisdiction of said petition to review herein and this request for enforcement by virtue of Section 10 (e) and (f) of the National Labor Relations Act.

(b) Upon the proceedings had in Case No. C-2024, including without limitation, complaint, answer, hearing for the purpose of taking testimony, trial examiner's intermediate report, exceptions filed thereto, and oral argument thereon, as more fully shown by the entire record of Case No. C-2024, certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on March 30, 1942, duly stated its findings of fact and conclusions of law and issued an order directed to petitioner, its officers, agents, successors, and assigns, as follows:

1. Cease and desist from:

(a) Refusing to bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive bargaining representative of its employees who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., as the exclusive representative of its employees who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys, with respect to

rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post notices immediately in conspicuous places in its plant and offices at Los Angeles, California, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting, stating (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) and (b) of this Order and (2) that the respondent will take the affirmative action set forth in paragraph 2 (a) of this Order;

(c) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

(e) The Board's decision (comprising its findings of fact and conclusions of law) and order were duly served upon petitioner on March 30, 1942.

(d) Pursuant to Section 10 (e) and (f) of the National Labor Relations Act, the Board is certifying and filing with this Court the transcript of the entire record in Case No. C-2024 before the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and the entire record in said proceedings before the Board to be served upon petitioner and that this Court take

jurisdiction of the proceedings and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and proceedings set forth in the entire record of said proceedings, and upon the order made thereon, a decree denying the petition to review and enforcing in whole said order of the Board set forth above and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 5th day of June, 1942.

ERNEST A. GROSS
Associate General Counsel,
National Labor Relations
Board.

[Endorsed]: Filed Jun. 10, 1942.

[Title of Circuit Court of Appeals and Cause No. 10123.]

STATEMENT OF POINTS UPON WHICH PETITIONER INTENDS TO RELY

To:

The Honorable the Justices of the United States Circuit Court of Appeals for the Ninth Circuit;

Honorable Paul P. O'Brien, Clerk of the above entitled Court;

National Labor Relations Board:

Pursuant to the provisions of Rule 19, Paragraph 6, of the Rules of Practice of this Court, Petitioner,

The Times-Mirror Company, states that the points upon which it intends to rely in this Court in this proceeding are as follows:

1. There is no substantial evidence to support the finding or conclusion of National Labor Relations Board that the five newsboys who testified in the proceedings conducted by the Board concerning their activities while engaged in street sales of the Los Angeles Times were or are employees of petitioner.

2. There is no substantial evidence to support the finding or conclusion of National Labor Relations Board that the newsboys engaged in street sales of the Los Angeles Times, and declared by the Board to constitute an appropriate unit, were or are employees of petitioner.

3. National Labor Relations Board erred in refusing to consider decisions of the California Industrial Accident Commission declaring the status of newsboys engaged in the street sale of Los Angeles Times to be that of independent contractors and not that of employees, and in affirming the ruling of the Trial Examiner (in Board's Case No. C-2024) wherein the Trial Examiner rejected petitioner's offer in evidence of certain exhibits designated in the Board's records as "Rejected Exhibits 1, 3, and 5."

4. There is no substantial evidence to support the finding or conclusion of National Labor Relations Board that the unit appropriate for collective bargaining purposes consisted of "

"all newsboys engaged in the street sale of the Times at established spots, 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys."

5. The relationship of petitioner with its alleged employees (i. e., newsboys engaged in the street sale of Los Angeles Times) is not subject to the jurisdiction of National Labor Relations Board.

6. No claimed labor dispute between petitioner and this alleged employees (i. e., newsboys engaged in the street sale of Los Angeles Times) can affect commerce within the meaning of National Labor Relations Act.

Respectfully submitted,
THE TIMES-MIRROR COMPANY, a corporation,

By COSGROVE & O'NEIL
T. B. COSGROVE
FRANK B. YOAKUM, Jr.,

By T. B. COSGROVE
Its Attorneys

AFFIDAVIT OF SERVICE BY MAIL OF COPY OF STATEMENT OF POINTS UPON WHICH PETITIONER INTENDS TO RELY.

United States of America,
State of California,
County of Los Angeles—ss.

Warren E. Slaughter, being duly sworn, deposes and says:

That affiant is a citizen of the United States, over the age of eighteen years, a resident of Los Angeles County, and not a party to the within and above entitled proceeding. Affiant's business address is 1031 Rowan Building, Los Angeles, California. On July 11, 1942, affiant served a copy of the attached "Statement of Points upon Which Petitioner Intends to Rely" on National Labor Relations Board by placing a true copy of said Statement of Points upon Which Petitioner Intends to Rely in an envelope addressed to National Labor Relations Board at its office address, viz:

"National Labor Relations Board,
Washington, D. C."

and on said date affiant served a copy of said Statement of Points upon Which Petitioner Intends to Rely on William R. Walsh, Regional Director, National Labor Relations Board, Twenty-first Region, by placing a true copy of said document in an en-

velope addressed to William R. Walsh at his office address, viz:

"William R. Walsh, Regional Director,
National Labor Relations Board,
U. S. Post Office and Courthouse,
Los Angeles, California."

Affiant then sealed each of said envelopes and deposited the same, with postage thereon fully prepaid, in the United States Post Office at Los Angeles, California. There is a delivery service by United States mail at the places so addressed and there is a regular communication by mail between the place of mailing and the places so addressed.

WARREN E. SLAUGHTER

Subscribed and sworn to before me this 11th day of July, 1942.

[Seal] MARY IVES ANDERSON
Notary Public in and for the
County of Los Angeles,
State of California.

[Endorsed]: Filed Jul. 14, 1942.

[Title of Court and Causes Nos. 10112, 10114, 10115, 10123.]

STATEMENT OF POINTS

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

the respondent herein, by its counsel, and pursuant to Section 6 of Rule 19 of the Court, the Board submits the following statement of points upon which it intends to rely in the Trial of the above-entitled case to the Court:

I

The National Labor Relations Act is applicable to petitioners.

II

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, petitioners have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act.

III

The Board's order is wholly valid and proper under the Act.

Dated at Washington, D. C., this 5th day of June, 1942.

ERNEST A. GROSS
Associate General Counsel
National Labor Relations Board

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 10112

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EXAMINER DEPARTMENT),

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 10114

STOCKHOLDERS PUBLISHING COMPANY, INC.

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 10115

HEARST PUBLICATIONS, INCORPORATED (LOS ANGELES EVENING HERALD & EXPRESS DEPARTMENT),

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 10123

THE TIMES-MIRROR COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

MOTION TO CONSOLIDATE

Comes now the National Labor Relations Board, respondent herein, by its Associate General Counsel, and respectfully moves that the above cases be consolidated for all purposes in this Court. In support of this motion respondent respectfully shows:

1. That all four cases were consolidated in the representation proceeding before the Board.

2. That in the complaint proceedings Cases No. 10112 and No. 10114 were heard as one consolidated case, and Cases No. 10115 and 10123 were heard as one consolidated case for the reason that the first two named cases went to hearing before the complaints were filed in the latter two.

3. That all four cases involve a refusal to bargain with one union under Section 8 (5) of the Act, which refusal is admitted but sought to be avoided on grounds presenting the same fundamental legal issues, i. e., whether the activities of petitioners affect commerce, and whether their newsboys are employees within the meaning of the Act.

4. That the methods of operation of petitioners,

insofar as they bear upon these issues, are substantially the same; that in certain instances the same newsboys sell papers for two or more of the petitioners; that the discussion of these common questions of law in one brief is feasible and would avoid unnecessary duplication of effort.

5. That consolidation of the cases would result in considerable saving to the parties, both with respect to printing and other expenses, and would result in convenience to the Court and the parties.

Wherefore, it is respectfully requested that Cause No. 10112, 10114, 10115 and 10123 be consolidated for all purposes in this Court.

Dated at Washington, D. C., this 27th day of June, 1942.

ERNEST A. GROSS
Associate General Counsel
National Labor Relations Board

So Ordered:

FRANCIS A. GARRECHT
United States Circuit Judge

[Endorsed]: Filed Jul. 1, 1942.

[Title of Circuit Court of Appeals and Causes Nos. 10112, 10114, 10115, 10123.]

ORDER RESPECTING DESIGNATION FOR PRINTED RECORD AND FILING OF BRIEFS.

Upon reading the annexed affidavits, and good cause appearing therefor, it is ordered

1. That nothing in the Order heretofore made, on, to wit: July 1, 1942, for consolidation of causes numbered 10112, 10114, 10115, and 10123, shall be taken to preclude the petitioner in each such cause from presenting separately by brief and by oral argument its case with respect to the points on which such petitioner relies on its separate petition for review;

2. That each such petitioner shall be entitled to file a separate opening brief, after which National Labor Relations Board may file separate answering briefs or a single answering brief, as it may be advised, and each petitioner thereafter may file a separate reply brief agreeably to the rules of this Court; and

3. That not more than one record shall be printed for a consideration of the four separate cases presented by the four separate petitions for review, it appearing that each such petitioner has designated for printing the same parts of the record now certified to this court.

Dated: July 14, 1942.

FRANCIS A. GARRECHT
Circuit Judge

[Title of Circuit Court of Appeals and Causes Nos. 10112, 10114, 10115, 10123.]

AFFIDAVIT OF SERVICE BY MAIL OF COPY OF "DESIGNATION OF THE PART OF THE CERTIFIED TYPEWRITTEN RECORD AND THE PARTS OF THE PROCEEDINGS IN THIS COURT NECESSARY FOR A CONSIDERATION OF THE POINTS ON WHICH PETITIONERS WILL RELY ON THEIR RESPECTIVE SEPARATE PETITIONS FOR REVIEW" AND A COPY OF "ORDER RESPECTING DESIGNATION FOR PRINTED RECORD AND FILING OF BRIEFS" AND "SUPPORTING AFFIDAVITS"

United States of America,
State of California,
County of Los Angeles—ss.

Warren E. Slaughter, being duly sworn, deposes and says:

That affiant is a citizen of the United States, over the age of eighteen years, a resident of Los Angeles County, and not a party to the within and above entitled proceedings. Affiant's business address is 1031 Rowan Building, Los Angeles, California. On July 17, 1942, affiant served a copy of the "Designation of the Parts of the Certified Typewritten Record and the Parts of the Proceedings in this Court Necessary for a Consideration of the Points on which Petitioners Will Rely on their Respective

Separate Petitions for Review" and a copy of "Order Respecting Designation for Printed Record and Filing of Briefs" and "Supporting Affidavits" (each of said documents having been heretofore filed in the above captioned cases) on National Labor Relations Board by placing a true copy of each of said documents in an envelope addressed to National Labor Relations Board at its office address, viz:

"National Labor Relations Board,
Washington, D. C."

and on said date affiant served a copy of said "Designation of the Parts of the Certified Typewritten Record and the Parts of the Proceedings in this Court Necessary for a Consideration of the Points on which Petitioners Will Rely on their Respective Separate Petitions for Review" and a copy of "Order Respecting Designation for Printed Record and Filing of Briefs" and "Supporting Affidavits" on William R. Walsh, Regional Director, National Labor Relations Board, Twenty-first Region, by placing a true copy of said documents in an envelope addressed to William R. Walsh at his office address, viz:

"William R. Walsh, Regional
Director,
National Labor Relations Board,
U. S. Post Office and Courthouse,
Los Angeles, California."

Affiant then sealed each of said envelopes and deposited the same, with postage thereon fully pre-

paid, in the United States Post Office at Los Angeles, California. There is a delivery service by United States mail at the places so addressed and there is a regular communication by mail between the place of mailing and the places so addressed.

WARREN E. SLAUGHTER

Subscribed and sworn to before me this 17th day of July, 1942.

[Seal] MARY IVES ANDERSON
Notary Public in and for the
County of Los Angeles,
State of California.

[Endorsed]: Filed Jun. 18, 1942.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10,112

HEARST PUBLICATIONS, INCORPORATED, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 10,114

STOCKHOLDERS PUBLISHING COMPANY, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 10,115

HEARST PUBLICATIONS, INCORPORATED, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 10,123

THE TIMES-MIRROR COMPANY, A CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

June 10, 1943

Upon Petitions for Review and Enforcement of Orders of the National Labor Relations Board

Before: DENMAM, MATTHEWS and STEPHENS, Circuit Judges.

STEPHENS, Circuit Judge:

Four publishers of newspapers separately petition this court for the review of orders of the National Labor Relations Board, and the Board petitions this court for orders of enforcement. All of the petitions are considered and disposed of in this opinion.

Each of the four newspaper petitioners publishes a newspaper in Los Angeles, California. Hearst Publications, Incorporated, Los Angeles Examiner Department, publishes the "Examiner." Stockholders Publishing Company, Inc., publishes "The News." Hearst

Publications, Incorporated, Los Angeles Evening Herald and Express Department publishes the "Herald-Express," sometimes called the "Herald." The Times-Mirror Company publishes the "Times."

A Petition for Investigation and Certification of Representatives under § 9 (c) of the so-called Wagner Act [29 USCA § 159 (c)], was filed with the Board against each of petitioners by the Los Angeles Newsboys Local Industrial Union, No. 75, an affiliate of the Congress of Industrial Organizations. The proceedings in each case resulted in the Board's decision and direction of Elections on January 9, 1941, in which the Board found that questions affecting interstate commerce had arisen, and that designated newsboys were employees of the publisher within the meaning of § 2 (3) of the Act [29 USCA § 152 (3)] and constituted appropriate units for the purposes of collective bargaining. As the outcome of the elections directed to be held, the Board certified the Union as the bargaining representative of the newsboys within each appropriate unit.[1]

After the filing by the Union of a charge against each publisher alleging unfair labor practices, the Board issued a complaint against each stating that the Union was a labor organization within the meaning of the Act, the publisher had refused to bargain collectively with the Union, which was the chosen representative of a defined appropriate unit of the publisher's employees, that by its refusal the publisher was engaging in unfair labor practices within the meaning of § 8 (1) and (5) of the Act [29 USCA § 158 (1) and (5)], and that the said practices affected interstate commerce. The Board rendered its final Decisions and Orders on March 30, 1942, in each instance directing the publisher to cease and desist from its refusal to bargain collectively with the Union and, upon request to bargain collectively with such Union. These are the orders of which the Board seeks enforcement, and of which the publishers seek review on the ground that

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[1] The appropriate units with respect to petitioners were defined in the Board's Decision and Direction of Elections, and amendments thereto, as follows:

(a) Los Angeles Examiner: "all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys."

"* * * the term 'established spot' * * * refers to a place where a newsboy has engaged in the street sale of the Times or the Examiner, as the case may be, 5 or more days a week for a period of 6 consecutive months or more, and the term 'temporary' newsboy * * * includes a newsboy who has engaged in the street sale of the Times or the Examiner, as the case may be, at an established spot for 30 days or less."

(b) The News: "all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys."

"With respect to the News, the term 'full-time' newsboy means a newsboy who sells the general public Five, Six, Eight, Nine and Ten Star editions, or Six, Eight, Nine and Ten Star editions of the News, 5 or more days a week, and means a newsboy who sells the Four Star editions and previous editions of the News for a minimum of 4 hours per day between the hours of 4 o'clock a. m. and 10 o'clock a. m., five or more days a week."

(c) Los Angeles Evening Herald and Express: "all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys."

"Thus defined with respect to the Los Angeles Evening Herald and Express, the term 'full-time' newsboy means a newsboy who regularly sells to the public 5 or more editions a day, 5 or more days a week; The term 'part time' newsboy means a newsboy who sells to the public less than 5 editions a day or who sells to the public all or any of the daily editions published by the Los Angeles Evening Herald and Express less than 5 days a week."

(d) Los Angeles Times: "all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys."

"Established spot" and "temporary spot" defined under (a) herein.

there is no substantial evidence to support the findings or conclusions of the Board.

Under §§ 9 (c) and 10 (a) of the Act [29 USCA §§ 159 (c) and 160 (a)] the Board has jurisdiction over any unfair labor practice "affecting commerce." The Board found both in the certification case and in the complaint case that the unfair labor practices of each of the newspapers bore a close and substantial relation to interstate commerce and tended to lead to disputes burdening the free flow of commerce, and concluded that they affected commerce within the meaning of § 2 (6) and (7) of the Act [29 USCA § 152 (6) and (7)]. Each of the publishers distributes a small percentage of its newspapers outside the state; obtains its newsprint and mats, two of its principal raw materials, from outside the state, uses one or more of the national news and photographic wire services, publishes a number of nationally syndicated articles prepared outside the state, and devotes an appreciable percentage of its space to national advertising.

None of the publishers disputes the fact that it is engaged in interstate commerce, but each denies that any of its activities in connection with its newsboys could lead to any situation which would affect such commerce. Each advances the argument that when particular activities are intrastate in character, they are included within the scope of the Act only "if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions," National Labor Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 37. See in accord: Consolidated Edison Co. v. National Labor Board, 305 U. S. 197, 222; Santa Cruz Fruit Packing Co. v. National Labor Board, 303 U. S. 453, 467; National Labor Board v. Hearst (CCA 9), 102 Fed. (2) 658, 662.

It seems clear that the very considerable factor of street sales in connection with the interstate business being carried on by each of the newspapers concerned herein cannot be separated from other phases of such business so as to distinguish this factor as intrastate business and some other factor as interstate business. It seems likewise clear that a disturbance in the street sales distribution of any one of these metropolitan dailies would materially affect the whole business and a fortiori would affect the free flow of interstate commerce. Such a conclusion was reached by this court in connection with drivers who transported newspapers to various stations throughout the city, National Labor Board v. Star Pub. Co. (CCA 9), 97 Fed. (2d) 465. See in accord: Associated Press v. National Labor Board, 301 U. S. 103, 129; Virginia Electric & Power Co. v. National Labor Board (CCA 4), 115 Fed. (2d) 414, 415, upheld on this point 314 U. S. 469, 476.

It should be mentioned here that the retail vendors of newspapers, described in the "appropriate units" are adult men, not boys, engaged in the street-vending of newspapers. The term "newsboys" is one of art. Although many schoolboys sell newspapers, they are not in-

cluded in the "appropriate units" of employees as that term is used in these proceedings.

The Board's final decisions of March 30, 1942, were based upon its findings in an earlier Decision and Direction of Elections. Therein, with respect to the status of newsboys within the described appropriate units, the Board found in effect: Circulation managers control the general execution of policies relating to newspaper distribution. District managers distribute the newspapers published by their respective companies in assigned geographical areas. Each district manager is admittedly an employee of the company whose paper he distributes. The newspapers are delivered to newsboys, who sell them to the public, or to so-called checkmen, who redistribute them to newsboys on neighboring corners. For their services the checkmen receive a small salary from the publisher. At least to the extent of such services, they are admittedly employees of the publisher. Aside from their wholesaling activities, the checkmen occupy positions similar to that of ordinary newsboys.

The district manager charges the newsboy or checkman for papers delivered an amount set by the publisher, except in the case of the News in which instance the district manager himself fixes the amount. The checkman charges the newsboy the same amount he pays the district manager. At the end of the selling period the newsboys settle with the district manager or the checkman, and the checkman settle with the district manager, for the newspapers distributed to them. Except the Herald under some circumstances, the newsboys are given credit for all unsold newspapers returned. The publisher determines the price to be charged the public, and the newsboys retain for themselves the difference between that sum and the amount they pay the publisher.

The district managers determine the number of newspapers in excess of the established order which the newsboys must try to sell. In practice, the newsboys cannot determine the size of their established orders without the cooperation of the district manager.

The newsboy customarily obtains his corner by applying at the plant of the publisher where he consults the district manager, who allocates the street corners in his district. The publishers furnish boxes, racks, money change aprons, and placards advertising special features contained in the newspapers; the equipment is distributed without charge to the newsboys by the district managers with instructions as to its use. Generally, the newsboy is required to be at his post from the time the newspapers customarily appear on the street to the time settlement is made.

The Board found that the record is "replete," with instances in which district managers have removed, permanently or temporarily, newsboys from their corners or transferred them from one location to another. The record also contains evidence with respect to the extent of the publishers' supervision over the conduct of the newsboys while they are engaged in selling newspapers on the street; the diligence of the newsboys is closely observed by the circulation department.

As a general practice, the newsboys sell several newspapers and handle magazines although in some instances the publishers have objected to the handling of competing publications. As the same group of newsboys have been handling both the Herald and the News, the district managers of both have instructed the newsboys how to hold, display, and call the two newspapers.

From such findings of fact the Board concluded that each publisher had sufficient right to control its newsboys' manner and means of performing their activities to support the relationship of employer and employee for the purposes of the Act.

Each petitioner has consistently contended that it need not bargain collectively with the Union (1) because the newsboys engaged in street sales are not its employees, (2) because the group designated by the Board is not an appropriate unit for collective bargaining purposes, and (3) because the activities of the newsboys involved have no tendency to lead to labor disputes burdening commerce nor do they affect commerce within the meaning of the Act.

The National Labor Relations Board has no jurisdiction over a controversy between a newspaper publisher and its newsboys unless the latter are employees of the former. §§1, 2 (3), (5), (9), 7, 9 (a), (b), and (c) of the Act [29 USCA §§ 151, 152 (3), (5), (9), 157, 159 (a), (b), and (c)]. Therefore, a primary consideration is the question whether such newsboys are employees within the meaning of the Act.

The Act does not specifically define either the term "employer" or the term "employee," but says simply "the term 'employee' shall include any employee." [2] Since the Act contains no precise definitions, the publishers contend that Congress intended to use the words in their ordinary and conventional sense as understood at the time the statute was enacted. The Board takes the position that a larger classification than that envisioned by common law or other statutes was contemplated. In its brief it concludes that "where the persons involved function in a realistic economic sense as employees of an industrial enterprise Congress intended them to be within the Act." In its Decision and Direction of Election in the certification proceedings, in discussing § 2 (3) of the Act, it asserts that: "In cases where the status of an individual was challenged, we have indicated that the statutory definition of the term 'employee' embraces all employees in the conventional as well as legal sense, except those by express provision excluded and that the primary consideration in the determination of the applicability of the statutory definition is whether effectuation of the declared policy and purposes of the Act comprehend securing to the individual the rights guaranteed and protection afforded by the Act."

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[2] National Labor Relations Act, § 2 (3) [29 USCA, § 152 (3)]: "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the chapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse."

We believe that the Board's position cannot be supported. The rule that an administrative application of a general statute is conclusive unless arbitrary, Gray v. Powell, 314 US 402, 411; Sunshine Coal Co. v. Adkins, 310 US 381, 399; Shields v. Utah Idaho Central R. Co., 305 US 177, is not applicable to the situation under consideration. Contrary to the cases cited, there is no delegation to an administrative body of power to determine whether the facts are within a specified exception to a statute, the exercise of which power involves an interpretation of terms. Rather does the instant case fall within the general rule that "the interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function." United States v. American Trucking Ass'ns., Inc., 310 US 534, 544.

Since the term "employee" is not defined in the Act, we agree with petitioners' contention that it must be given its conventional meaning as developed under the common law and statutory enactments. Such a result is in accord with the basic theory of statutory interpretation that the legislature is presumed to use words in their ordinary sense unless that sense is contradicted by the context of a statute. Old Colony R. Co. v. Commissioner, 284 US 552, 560; Kepner v. United States, 195 US 100, 124; Levy's Lessee v. M'Cartee, 10 US 47, 49; Commissioner v. Plestcheef (CCA 9), 100 Fed. (2d) 62, 64. Since the principle is a long established one, it would seem that if Congress had intended to enlarge upon the common meaning of "employee," it would have specifically so stated in the Act, which sets out specific definitions to several terms used in the Act.

The dictionary definition of "employee" is "one employed by another; one who works for wages or salary in the service of an employer," Webster's New International Dictionary (2nd ed., 1937).

The term "employee" has been interpreted under several federal statutes, other than the National Labor Relations Act, in like manner based upon a broad policy of public benefit. In connection with the Federal Employers Liability Act (45 USCA § 51) the Supreme Court stated: "We are of the opinion that Congress used the words 'employee' and 'employed' in the statute in their natural sense, and intended to describe the conventional relation of employer and employee." Robinson v. Baltimore & Ohio RR. Co., 237 US 84, 94. In accord: Hully, Philadelphia & Reading Ry. Co., 252 US 475, 479. In connection with the Social Security Act (42 USCA § 1004) this court asserted: "However, in defining the required relationship, and in drawing the distinctions between an employee and an independent contractor, the regulations [defining an employee as one who is subject to the control of his employer with respect to what shall be done and as to how it shall be done] do no more than reiterate the familiar principles of the common law," Anglin v. Empire Star Mines Co. (CCA 9), 129 Fed. (2d) 914, 917. In accord: Jones v. Goodson (CCA 10), 121 Fed. (2d) 176; Texas Co. v. Higgins (CCA 2), 118 Fed. (2d) 636. A similar result was reached in connection with the Merchant Marine Act (46 USCA § 688), Loe v. Goldstein (CCA 9),

101 Fed. (2d) 967, and with the Federal Safety Appliance Act (45 USCA § 11), Stevenson v. Lake Terminal R. Co. (CCA 6), 42 Fed. (2d) 357.

In determining status as between employee and independent contractor the basic inquiry is where the right to control lies, and the control referred to must be complete control of the means and methods of performance. (See 39 C. J. 1316, Master and Servant § 1518.) State court decisions exemplifying these principles in cases involving the status of newsboys under state workmen's compensation acts are plentiful and persuasive. The leading case in California is New York Indemnity Co. v. Industrial Accident Commission, 213 Cal. 43, 1 Pac. (2d) 12, where newsboys engaged in the street sale of newspapers under circumstances similar to those in the instant case were held not to be employees [3] of the publishers. The newsboy sold for two different publishers newspapers which he bought from a district manager. A certain place on the streets was allotted to each newsboy, who received instructions from the district manager not to intrude upon the place allotted to another. The boy was required to be diligent in selling his papers, or further copies would be refused him and his place would be assigned to another. The district manager was to supervise the activities of the newsboys so as to achieve the sale of as many newspapers as possible. The court held: "* * * we are constrained to hold that the limited amount of control which the publishers of these two newspapers undertook to exercise over the newsboys * * * who daily purchased from their district manager a specified number of copies of their daily issues for a specific sum, payable in cash or at the close of each day's sales, and who undertook the retailing of the same to such customers among the public at large as they were able to attract or procure at a specified place and price fixed by the publishers, would not as a matter of law be sufficient to constitute such newsboys the employees of the publishers of said newspapers * * *." 1 Pac. (2d) 15. The rule upon which the decision was based was followed in State Compensation Fund v. Industrial Accident Commission, 216 Cal. 351, 14 Pac. (2d) 306; and in Hartford Accident & Indemnity Co. v. Industrial Accident Commission, 123 Cal. App. 151, 10 Pac. (2d) 1035. Even though some degree of supervision is exercised other state decisions have emphasized the lack of a control extensive enough to constitute the newsboy an employee of the publisher. Birmingham Post Co. v. Sturgeon, 227 Ala. 162, 149 So. 74; Bernat v. Star-Chronicle Pub. Co. (Mo. App.), 84 S. W. (2d) 429; Creswell v. Charlotte News Pub. Co., 204 N. C. 380, 168 S. E. 408; Balinski v. Press Pub. Co., 118 Pa. Sup. 89, 179 Atl. 897.

The question for decision as to each newspaper separate from any other paper is whether there is substantial evidence that the publisher exercises, or has the right to exercise, sufficient control over the activi-

[3] California Labor Code, § 3000 (formerly § 2009 of California Civil Code): "A servant is one who is employed to render personal service to his employer, other than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the employer, who is called his master."

ties of the newsboys defined in its appropriate unit to support the Board's decision that they were employees under § 2 (3) of the National Labor Relations Act.

Each publisher in its brief points out in detail the only testimony relating to it that could support the Board's findings. We shall not attempt to distinguish between the evidence separately referable to each publisher in view of the fact that we believe, even though all the testimony be applied to all petitioners, or that induced upon behalf of each be applied to it alone, that there is not substantial evidence herein to support the Board's determination that the newsboys are "employees" of the publishers, cf. Matter of Houston Chronicle Publishing Co., 28 NLRB 1043.

We have received an amicus curiae brief from the International Printing Pressmen and Assistants' Union of North America, affiliated with the American Federation of Labor. The point is developed and emphasized therein that the vending of a newspaper by a newsboy is the sale of an intangible service and an integral part of the dissemination of the news from reporter to reader, rather than a sale of tangible personal property. We have studied the brief carefully, and conceding the point made as correct for the sake of argument, we do not follow the brief writer to his conclusion that it affects the status of the vendor in his relation with the newspaper publisher. The service rendered by the newspaper to the paper reader may be rendered either through the agency of an employee or through a contractual agreement with the vendor or through a sale to him for resale to the reader.

In the instance the publisher had at best a limited control over the activities of the newsboys inadequate to constitute it an employer under § 2 (3) of the Act. The profits to the newsboys consisted of the difference between the price paid to the publisher and the price paid by the public. That both prices were fixed by the publisher is not an authoritative indication of control. A similar practice is frequently followed in the consigning of merchandise by a manufacturer to a retailer under agreements to sell at the price fixed by the manufacturer. During the period between the delivery of the newspapers to a newsboy and his paying the district manager for them at the close of each selling day, the boy accounts for the number of newspapers left with him. His is the risk of loss if a newspaper is accidentally destroyed or is stolen. The fact that the burden of loss without fault falls upon the newsboy together with the fact that his compensation results from the variance between the wholesale and retail price of the commodity he vends, fits very closely to the boy's status as an independent merchant and does not fit at all to the status of an employee. The extension of credit for a few hours from delivery to the day's end accounting is no indication that the debtor is an employee. On the contrary, it is evidence of an independent status of the newsboy. Whether or not the newspapers are sold to the newsboy when he takes them from the distributor or whether or not the newspapers are entrusted to the newsboy under an agreement

tacit or express to account to the newspaper management for all papers not returned does not go to the essentials of the relation of employer and employee.

The fact that newsboys dealt in other and often in competing publications is a significant factor pointing toward their independence. Also notable is the practice of buying and selling valuable corners in some instances without the publisher's knowledge or expressed approval of the transactions. Since the place of business of a newsboy is a public street or sidewalk, neither the publisher nor the boy has any proprietory right to any "corner" or locality. The fact that the newsboys do not encroach on one another's territorial jurisdiction is principally a result of a tacit understanding between them based in large measure, it would seem, upon the old law of prior possession and ability to defend a squatter's privilege. Personal conflict over this vendor privilege is not a rarity though it is the exception to the rule of acquiescence. It should be mentioned that many of the newsboys hired at will other boys and relief men to help them sell newspapers in their selected territory, and dismissed them at will.

The Board's finding that the record is "replete" with examples of the removal of newsboys from their corners by district managers is misleading, as in every instance the newspaper merely refused to deliver further copies of its publication to the newsboy, thereby exercising the full extent of its power in the premise. The right of a dealer to terminate his relationship with a retailer by refusing to deliver further merchandise is part of the normal understanding between them, and consequently, such a right cannot be relied upon as tending to constitute one the employer and the other the employee. In effect, "the only control which * * * [the district manager had over the newsboys] was to refuse to sell them any newspapers if they would not respect the usual custom or understanding prevalent among news dealers." Balinski v. Press Pub. Co., 118 Pa. Sup. 89, 179 Atl. 897, 899.

Even though it is conceded that the so-called checkmen are employees of the publisher to the extent that they function as wholesalers, they need not occupy the same status to the extent that they function as newsboys. State Compensation Ins. Fund v. Industrial Accident Commission, 2 Cal. (2d) 94, 39 Pac. (2d) 201. (See also 71 C. J. 477, Master and Servant § 207.) We think the Board is not supported by substantial evidence in its finding that the "newsboys" are employees of the publisher whose newspaper they vend.

The order in each case is set aside.

DENMAN, Circuit Judge, dissenting:

The question here is whether these adult news vendors, miscalled boys, are employee selling agents of the publishers or independent contractors, who obtain title when a certain sum is charged against them on their receipt of the papers from the publishers. If I were free to draw my own inferences from the testimony, I would decide that they were independent contractors, engaged in their own businesses on their respective spots.

However, we are not free to draw our own inferences, and the sole question before us is whether the Board reasonably could infer from the varied incidents of the relationship between the men and the publishers that it is one of employer and employee. Cf. my dissenting opinions in the two cases of National Labor Relations Board v. Citizen News Co., Nos. 9,994 and 9,995, filed April 8, 1943, and April 16, 1943, respectively.

I do not regard the fact that on receipt of the papers by these men a certain amount is charged against them, as conclusively showing a passage of title to them. Employees are frequently charged with the value of the employer's property entrusted to the employees' care, and the latter docked for an equal amount for negligent loss or misuse.

No general bill of sale or written or other agreement existed showing an independent contractor relationship. To me it is significant that with the long period of dispute over that relationship, no such an agreement was in fact made. Nothing in the National Labor Relations Act prevents one from arranging his business relations with another in any form he chooses to select.

Since there is no necessary inference of a sale, I cannot say that, with the evidence of controls usually exercised by employers, the Board could not rationally infer that the men were employees who collected the money for the papers and, as compensation for their services to the publishers, were allowed to keep the difference between the amount charged and the selling price.

(Endorsed:) Opinion and Dissenting Opinion. Filed Jun. 10, 1943. Paul P. O'Brien, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 10112

HEARST PUBLICATIONS, INCORPORATED, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DECREE

Upon consideration of the petition of Hearst Publications, Incorporated, filed April 24, 1942, for review of an order of the National Labor Relations Board of March 30, 1942, in this proceeding, and of the answer of said National Labor Relations Board, and its petition for enforcement filed June 10, 1942, of its said order, and of the transcript of record in this cause, briefs filed, and oral arguments made by counsel for the respective parties, and good cause therefor appearing.

IT IS ORDERED, ADJUDGED, AND DECREED that said petition to enforce be and hereby is denied, and said petition for re-

view be and hereby is granted, and that the said order of the National Labor Relations Board in this cause be and hereby is set aside.

(Endorsed) Decree.

Filed June 10, 1943.

Paul P. O'Brien, *Clerk.*

No. 10114

Stockholders Publishing Company, Inc., petitioner

v.

National Labor Relations Board, respondent

DECREE

Upon consideration of the petition of Stockholders Publishing Company, Inc., filed April 24, 1942, for review of an order of the National Labor Relations Board of March 30, 1942 in this proceeding, and of the answer of said National Labor Relations Board, and its petition for enforcement filed June 10, 1942 of its said order, and of the transcript of record in this cause, briefs filed, and oral arguments made by counsel for the respective parties, and good cause therefor appearing.

IT IS ORDERED, ADJUDGED, AND DECREED that said petition to enforce be and hereby is denied, and said petition for review be and hereby is granted, and that the said order of the National Labor Relations Board in this cause be and hereby is set aside.

(Endorsed) Decree.

Filed June 10, 1943.

Paul P. O'Brien, *Clerk.*

No. 10115

Hearst Publications, Incorporated, petitioner

v.

National Labor Relations Board, respondent

DECREE

Upon consideration of the petition of Hearst Publications, Incorporated, filed April 24, 1942, for review of an order of the National Labor Relations Board of March 30, 1942, in this proceeding, and of the answer of said National Labor Relations Board, and its petition for enforcement filed June 10, 1942, of its said order, and of the transcript of record in this cause, briefs filed, and oral arguments made by counsel for the respective parties, and good cause therefor appearing.

IT IS ORDERED, ADJUDGED, AND DECREED that said petition to enforce be and hereby is denied, and said petition for review

be and hereby is granted, and that the said order of the National Labor Relations Board in this cause be and hereby is set aside.

(ENDORSED) DECREE.
Filed June 10, 1943.

PAUL P. O'BRIEN, *Clerk.*

No. 10123

THE TIMES-MIRROR COMPANY, A CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DECREE

Upon consideration of the petition of Times-Mirror Company, filed May 1, 1942, for review of an order of the National Labor Relations Board of March 30, 1942, in this proceeding, and of the answer of said National Labor Relations Board, and its petition for enforcement filed June 10, 1942, of its said order, and of the transcript of record in this cause, briefs filed, and oral arguments made by counsel for the respective parties, and good cause therefor appearing.

IT IS ORDERED, ADJUDGED, AND DECREED that said petition to enforce be, and hereby is denied, and said petition for review be and hereby is granted, and that the said order of the National Labor Relations Board in this cause be and hereby is set aside.

(ENDORSED) DECREE.
Filed June 10, 1943.

PAUL P. O'BRIEN, *Clerk.*

Certificate of clerk, U. S. Circuit Court of Appeals for the Ninth Circuit, to record certified under Rule 38 of the Revised Rules of the Supreme Court of the United States

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one thousand eight hundred sixty-one (1,861) pages, numbered from and including 1 to and including 1861, to be a full, true, and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the respondent, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 20th day of August 1943.

(Signed) PAUL P. O'BRIEN, *Clerk.*

U. S. GOVERNMENT PRINTING OFFICE 1943

Supreme Court of the United States

No. 336, October Term, 1943

Order allowing certiorari

Filed October 25, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 337, October Term, 1943

Order allowing certiorari

Filed October 25, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 338, October Term, 1943

Order allowing certiorari

Filed October 25, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 339, October Term, 1943

Order allowing certiorari

Filed October 25, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1943

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CITATIONS

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Restatement of the Law of Agency, Sections 2, 220 17
Some Aspects of Coverage Under Insurance Provisions of the Social Security Program, Social Security Yearbook, 1940, pp. 74–75 25
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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 336

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HEARST PUBLICATIONS, INCORPORATED

No. 337

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

STOCKHOLDERS PUBLISHING COMPANY, INC.

No. 338

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HEARST PUBLICATIONS, INCORPORATED

No. 339

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE TIMES-MIRROR COMPANY

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that writs of cer-

tiorari issue to review decrees of the United States Circuit Court of Appeals for the Ninth Circuit entered on June 10, 1943 (R. 1852–1854), setting aside orders of the Board issued against Hearst Publications, Incorporated, Stockholders Publishing Company, Inc., and The Times-Mirror Company.

OPINIONS BELOW

The opinions of the Circuit Court of Appeals (R. 1843–1852) are not yet reported. The findings of fact, conclusions of law, and orders of the Board (R. 331–351, 454–479) are reported in 39 N. L. R. B. 1245, 1256. The decisions of the Board in prior representation proceedings which form part of the record in these cases (R. 76–146, 187–197, 237–240) are reported in 28 N. L. R. B. 1006, 33 N. L. R. B. 941, 36 N. L. R. B. 285.

JURISDICTION

The decrees of the Circuit Court of Appeals were entered on June 10, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the Board's ultimate finding that certain individuals are employees within the meaning of the Act is to be accepted by the courts

when not unreasonable or is subject to *de novo* judicial review.

2. Whether the Board properly found that persons who sell newspapers subject to the supervision and control of the publishing company are employees within the meaning of Section 2 (3) of the Act.

3. Whether the context of the Act furnishes the basis for a definition of employment broader in scope than the common law definition of a servant.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*) are set forth in the Appendix, *infra*, pp. 27–30.

STATEMENT

In proceedings instituted by four separate petitions for investigation and certification of representatives under Section 9 (c) of the Act, filed by the Los Angeles Newsboys Local Industrial Union, No. 75, affiliated with the Congress of Industrial Organizations, herein called the Union, the Board issued a decision and direction of elections finding that respondents were engaged in commerce within the meaning of the Act, that their newsboys were employees under Section 2 (3), and that the regular full-time newsboys vending each separate newspaper constituted a separate appropriate bargaining unit and directing elections (R. 77–121;

28 N. L. R. B. 1006). The Union was selected by a majority of the eligible employees in each election and as a result was certified by the Board as the representative of each of respondents' newsboys within the appropriate unit (R. 187–197, 237–240; 33 N. L. R. B. 941, 36 N. L. R. B. 285).

Thereafter, in proceedings under Section 10 (c) of the Act, the Board, on March 30, 1942, issued decisions finding that each of the respondents, subsequent to the certification of the Union, had refused to bargain collectively with it, thereby engaging in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act (R. 331–350, 455–479; 39 N. L. R. B. 1245, 1256). The Board ordered each respondent to cease and desist from refusing to bargain with the Union or engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees, upon request to bargain collectively with the Union, and to post appropriate notices (R. 347–350, 475–479; 39 N. L. R. B. 1245, 1256).

The evidence in support of the Board's finding that the newsboys are employees of the respective respondents (R. 88–111), may be summarized as follows:

Respondents publish four newspapers;[1] the newsboys within the appropriate bargaining units

[1] Hearst Publications, Incorporated, publishes the Los Angeles Evening Herald and Express, an evening paper published daily except Sunday, and the Los Angeles Examiner, a morning paper published daily, including Sunday (R. 49, 69). The department of Hearst Publications, In-

who distribute these newspapers are not boys, as the name implies, but are mature or elderly men, often with families to support, who depend upon their earnings from the distribution of respondents' newspapers on the streets as their source of livelihood (*Herald*, R. 859–860; *Examiner*, R. 1419, 1438; *Times*, R. 1284, 1309–1310; *News*, R. 558–559, 859–860).[2] Many of them have long service records (*Herald*, R. 599, 746, 799–800, 1117; *Examiner*, R. 1397, 1404; *Times*, R. 1284, 1315; *News*, R. 749, 1118). They differ in these respects from schoolboys who are known as carriers and have a home-delivery route before or after school, or who act as part-time street salesmen (R. 566, 860–861, 865). The latter are expressly excluded from the unit found by the Board to be appropriate (R. 114–116) and the Board has not passed upon the applicability of the Act to such persons.

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corporated, which publishes the Los Angeles Herald and Express, is herein called the Herald; that which publishes the Los Angeles Examiner is herein called the Examiner. Respondent Stockholders Publishing Co., Inc., publishes the News, a paper published daily except Sunday (R. 61), and respondent The Times-Mirror Company, publishes daily, including Sunday, the Los Angeles Times, a morning paper, which is herein called the Times (R. 64–65, 1169).

[2] Throughout this petition, reference will be made to the respondents collectively except where an individual factual variation requires a reference to the specific respondent. The record references following any statement referring to respondents collectively will indicate what evidence supports the statements with respect to each respondent in the following manner (*Examiner*, R. —; *Herald*, R. —; *Times*, R. —; *News*, R. —).

The newsboys are "hired" and "fired," disciplined, directed, and supervised (see pp. 8–10, *infra*) by respondents through supervisory employees known as the "district manager" or the "district man" (R. 549, 1180; *Examiner,* R. 1373, 1432; *Herald,* R. 605–607; *Times,* R. 1156; *News,* R. 1125, 1127–1129). The district managers keep lists of the newsboys in their districts, the locations where they are stationed, the quota assigned to each boy, the names of the checkmen or "main spot" boys[3] through whom they distribute and the amounts so subdistributed (*Herald,* R. 572, 574, 616–629; *Examiner,* 1383–1384; *Times,* R. 504–521; *News,* R. 1091–1093). The district managers determine the number of newspapers to be taken out each day for distribution by the checkmen and newsboys in their respective districts in the light of the importance of the day's headline, sometimes doubling or trebling the usual number (*Examiner,* R. 1365–1366, 1374; *Herald,* 1048; *Times,* R. 1156–1157, 1178, 1285, 1293–1294; *News,*

[3] Checkmen both receive papers for themselves and also for distribution to other newsboys in the vicinity. They are paid a small salary for performing the latter service, and respondents have conceded that, to the extent that such services are performed, the checkmen are their employees (R. 90, 1846; *Herald,* R. 604–606; *News,* R. 1090). A description of the functions of the checkman is contained in *Pacific Employers Insurance Co.* v. *Industrial Accident Commission,* 3 Cal. (2d) 759, 47 Pac. (2d) 270, and *Associated Indemnity Corp.* v. *Industrial Accident Commission,* 128 Cal. App. 104, 16 Pac. (2d) 774, where such individuals were found to be employees under the California Workmen's Compensation Act.

789). They keep the newsboys informed as to how news is developing, what breaks to anticipate, how to call important headlines, and how to play up special features (*Herald,* R. 578–579, 566–567, 598–599, 794, 806–807, 873; *Examiner,* R. 1363; *Times,* 1220).

In addition, both the Examiner and the Herald maintain further supervision over the checkmen and newsboys through "checkers," who patrol the districts, noting whether the checkmen and newsboys keep hours, "hustle" with due diligence, follow instructions as to the manner of displaying and calling papers, and otherwise conduct themselves in accordance with rules (*Examiner,* R. 1450–1451, 1446–1447, 1484–1485; *Herald,* R. 575–577, 748). The checkers make written reports to the Herald and the Examiner, and when necessary, recommend newboys for discharge, discipline, or reprimand in a written instruction to the district manager (*Examiner,* R. 1446–1451, 1484–1485; *Herald,* R. 575–578, 748). On the News and the Times the district managers themselves kept a close check on these matters (*News,* R. 733, 737–738, 756, 777–778; *Times,* R. 1221–1222, 1330–1333).[4]

[4] The district managers of each paper and the checkers on the Herald and Examiner are under a circulation manager (*Examiner,* R. 1349, 1352, 1446–1448; *Herald,* R. 544–545, 575–578; *Times,* R. 1151; *News,* R. 1079). In addition, certain of the papers employ an intermediate supervisory official between the circulation manager and the district manager, known variously as branch manager, supervisor of street

The newsboy obtains employment by applying at the plant to the district manager, who then assigns him to a particular spot if an opening is available (*Examiner,* R. 1436, 1438–1439, 1495, 1527; *Herald,* R. 590, 595, 606, 638, 696; *Times,* R. 1181–1182, 1250, 1212–1214, 1160; *News,* R. 1098–1099, 1108, 1116). All respondents also furnish transportation to the newsboys from the plant to their respective corners and after work is over bring them back (*Examiner,* R. 1566; *Herald,* R. 995–996; *Times,* R. 1157, 1180, 1183–1185, 1170–1171, 1202, 1207, 1213–1215, 1223–1225, 1228, 1246, 1254, 1345; *News,* R. 1115, 1157, 1171).

The newsboys are subject to removal at will and to transfer or disciplinary lay-offs by the district managers (*Examiner,* R. 1404, 1410–1411, 1455–1456, 1458–1460, 1477–1478, 1525; *Herald,* R. 601, 729, 739–740, 746–747, 876, 878, 901–902, 1146–1147; *Times,* R. 1161, 1185, 1187–1189, 1191–1192, 1221–1223, 1329–1333, 1379–1380). Respondents also exercise extensive control over the details of the newsboys' selling activities. The district man-

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sales, or street sales manager (*Herald,* R. 548–549, 574, 640; *Examiner,* R. 1362–1363; *Times,* R. 1152, 1154). These officials perform such functions as hearing appeals from newsboys who have been disciplined or "fired" (*Times,* R. 1162, 1176–1177, 1330–1333), relaying from the circulation manager instructions relative to price changes, the time of the appearance of an extra on the streets, or the manner in which the newspaper is to be displayed (*Herald,* R. 562–564, 579), and checking up on the progress of sales (*Herald,* R. 591; *News,* 1072–1073, 1083–1084).

agers not only allocate corners and spots; they even instruct the newsboys where to sell and in what part of the street to stand, and how to hold and display the papers.[5] To further the effective distributions of the newspapers, respondents supply the newsboys with racks, change aprons, ad-

[5] Thus, in accordance with the district managers and checkmen's duty to "see that they [the newsboys] are working" (R. 681, 694), in the case of the News, the district manager directed a checkman to keep one of his "off spot" boys in a traffic spot at certain times (R. 1118–1120); in the case of the Times, a newsboy was instructed at various times to "work traffic and cover this drive-in stand," to "watch them cars in there every 10 or 15 minutes," to "go in the bar and flash your papers," but that the management objected to "blast[ing] your headline," to "hold your paper up and give the customers a chance to see the paper," not to "cause any disturbance * * * [and] go right back to your safety zone" (R. 1218–1219); in the case of the Herald, the district manager instructed a newsboy to "always play that safety zone," an instruction which the newsboy followed although he could sell more papers remaining on his corner (R. 909–910), another newsboy was instructed to stand in the traffic zone to catch the autos (R. 818); in the case of the Examiner, a newsboy was at various times directed to "work the market around there and watch the corner, and also work the white [traffic] line," and to "watch the Times guy" to see that he did not reach customers first (R. 1458, 1460). News and Herald newsboys were given instructions as to the exact manner in which they should display both papers so that the headlines of each might be visible (*News*, R. 725–726, 750–751, 1120; *Herald*, R. 563–564, 642, 796, 832–833). The record contains many other examples of the detailed manner in which respondents supervise the newsboys (*Examiner*, R. 1461–1462, 1468–1469, 1445, 1473, 1481–1484, 1497; *Herald*, R. 716–717, 754–755, 1040; *Times*, R. 1183–1184, 1187, 1186, 1191–1192, 1222, 1243–1244; *News*, R. 756, 777–778, 835, 1098).

vertising placards and similar equipment and the district managers furnish specific instructions to their newsboys with regard to the display of newspapers in the racks and the posting of advertising materials (*Examiner,* R. 1366, 1367, 755, 1371–1372, 1367, 1369, 1485–1487, 1500–1501, 1586, 1606–1607; *Herald,* R. 590, 732, 755–756, 810, 813, 834–835, 838; *Times,* R. 1163, 1165, 1167, 1168, 1172, 1190–1191, 1217, 1220–1221, 1251–1256, 1331; *News,* R. 810–811, 835, 903, 908, 1082–1083, 755–756, 1098, 1105, 1106–1107). Newsboys are required to be at their posts from the time the papers customarily arrive until the close of the selling day (*Examiner,* R. 1380, 1394–1395, 1398, 1434, 1446–1447, 1462–1463, 1487, 1587–1588, 1602, 1608, 1616, 1621, 1623; *Herald,* R. 590–591, 727–728, 748, 795, 880–881, 896–899; *Times,* 1184, 1202–1203, 1224–1225, 1250–1251, 1330–1333; *News,* 733, 737–738, 1098–1099).

Some, but not all (*Herald,* R. 904; *News,* R. 1104, 1111; *Times,* R. 1243–1244, 1628; *Examiner,* R. 1419, 1592, 1622), of the newsboys sell publications other than these involved herein, such as magazines (*Herald,* R. 718, 734–735, 779–780, 806, 822, 837, 849, 908, 932, 941–942, 945–946, 1027–1028; *Times,* R. 1260–1267; *Examiner,* R. 1464–1465, 1471–1474). The sale of such publications constitutes only a relatively minor aspect of the newsboys' activities (*Herald,* R. 754, 780, 787, 806, 843–845, 889, 908, 923, 941–942; *Times,* R. 1271–1272).

There was also an arrangement created by the Herald and News for the handling of both papers by a single set of newsboys (R. 558–559, 564–565, 692–693, 749, 1066, 1071, 1636). The newsboys, in addition, in some instances (but see *Herald,* R. 849–850, 908, 1027; *News,* R. 1111; *Times,* R. 1191, 1208, 1243–1244, 1251, 1325–1326, 1628; *Examiner,* R. 1464, 1592, 1611, 1622, 1628) arrange among themselves for the afternoon newspaper boy to handle small quantities of left-over morning papers, and *vice versa* (*Herald,* R. 719, 734, 778, 780, 846–847, 886–887, 922, 932, 941, 982–983; *Times,* R. 1266, 1278; *Examiner,* R. 1426, 1617, 1622) and occasionally for the handling of a few copies of competing papers for their mutual accommodation (*News,* R. 1108, 1112; *Times,* R. 1261–1262, 1271–1272, 1277; *Examiner,* R. 1417–1418, 1617).

The newsboys are required to sell the papers at prices fixed by the respondents. They do not pay for the papers when they get them, but at the end of each day return unsold papers and are charged a certain amount specified by respondents for the papers not returned. They keep the difference between the latter amount and the price at which the papers are sold to the public. (*Examiner,* R. 1366, 1566; *Herald,* R. 570, 655; *Times,* R. 1158, 1160, 1285–1286; *News,* R. 1086, 1128, 1130, 1084.)

The checkman and newsboys regard themselves as employees (R. 820, 825, 853, 871, 893–894, 898,

1464), were so regarded by representatives of respondents (R. 585, 696, 717, 802, 820, 1116, 900, 1122, 1332, 1484), and by the public (R. 746–747, 969–972, 1040, 1122–1123). They formed the Union (R. 867–872) which sought to negotiate with respondents in their behalf (R. 668–673) and adjusted grievances through collective action (R. 554, 659–677, 871, 873–874, 1085–1086, 1162–1163).

Upon petitions filed in the court below by each of the respondents (R. 1699, 1738, 1764, 1806), the court, Judge Denman dissenting (R. 1851), set aside the orders of the Board upon the ground that respondents' newsboys are not employees (*ibid.*). The court held (1) that the Board's ultimate finding that the newsboys here involved are employees was one of law upon which the court was entitled to exercise a judgment entirely independent of that of the Board, (2) that the word "employee", as used in the Act, must be given its usual common law significance, and (3) that under the common law tests, the newsboys were not employees but independent contractors. The dissent asserted that the Board's inference of an employment relationship was a reasonable one and hence should have been left undisturbed (R. 1852).[6]

[6] The court rejected a contention by respondents that the activities of the newsboys here involved do not affect interstate commerce (R. 1845) and failed to pass upon respondents' claim that the unit found by the Board was inappropriate for collective bargaining purposes.

SPECIFICATIONS OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the Board's denial of respondents' claim of exemption from the statute was improper.

2. In holding that the newsboys are "independent contractors."

3. In holding that the issue presents a question of law for the court to decide for itself and in failing to give any weight to the Board's determination that newsboys are employees within the meaning of the Act.

4. In holding that the Board is required to follow the common law definition of employment without regard to the policies or context of the Act.

5. In failing to hold that the relationship involved herein is a personal service relationship which, even under common law standards, clothes the newsboys with employee status.

6. In setting aside and denying enforcement to the Board's orders.

REASONS FOR GRANTING THE WRITS

1. The ruling of the court below that it was entitled to determine *de novo* whether or not the newsboys were employees conflicts with *Walker* v. *Altmeyer,* C. C. A. 2, decided July 12, 1943, as well as with decisions of this Court (*Gray* v. *Powell,* 314 U. S. 402; *South Chicago Coal & Dock Co.*

v. *Bassett*, 309 U. S. 251) in which it has been held that the administrative judgment on such matters is to be respected if rendered after a fair hearing and "in a just and reasoned manner." In *Walker* v. *Altmeyer, supra*, the question was whether Walker was "an employee" within the meaning of Section 209 (b) of the Social Security Act, as amended August 10, 1939 (53 Stat. 1373, 42 U. S. C, sec. 409 (b)).[7] The Social Security Board held that he was, but its decision was set aside by the district court, which drew its own inference from the facts instead of accepting that of the Board. The Circuit Court of Appeals for the Second Circuit reversed, stating that—

> It was the judgment of the administrative body as to an employer-employee relation-

[7] Walker had been paid old-age benefits for a period during which he had failed to report that he had received over $15.00 per month from other sources. Under Section 203 (d) (1) (42 U. S. C., sec. 403 (d) (1)) the Social Security Board is required to deduct from future benefits any amounts paid during months in which an individual "rendered services for *wages* of not less than $15." Section 209 (a) (42 U. S. C., sec. 409 (a)) defines "wages" as meaning "all remuneration for *employment*," and Section 209 (b) defines "employment" as meaning "any service performed * * * by an employee for the person employing him." Thus if an individual does not receive compensation as an employee, the deduction cannot properly be made. The Social Security Board held that Walker, a lawyer, had been an employee during a period in which he had received over $15.00 per month, and that a deduction should accordingly be made from future benefit payments due him. Walker attacked this decision on the ground that he was not an employee but an independent contractor.

> ship rather than that of the court which the statute made effective provided that judgment was based upon conclusions reasonably reached upon due consideration of all relevant issues presented after parties in interest had been given a fair hearing or a fair opportunity to be heard upon the facts and the applicable law. *Gray* v. *Powell,* 314 U. S. 402.

Both the *Walker* case and the case at bar involved statutory provisions applicable only to "employees"; the board involved in each case was authorized generally to determine whether particular conduct came within the applicable statute, although neither statute contained a clause authorizing the administrative agency specifically to pass upon the existence of the employment relationship.[8] Each statute provided that the administrative findings of fact, if supported by substantial evidence, should be conclusive.[9] The decision in the instant case that a finding that persons are employees presents a question of "law" for independent judicial determination is directly contrary to the holding in the *Walker* case on the same point.

The court below did not disturb the Board's subsidiary findings of fact, but justified the substitution of its judgment for that of the Board with

[8] National Labor Relations Act, sec. 10; Social Security Act, sec. 205 (42 U. S. C., sec. 405 (b)).

[9] National Labor Relations Act, sec. 10 (e); Social Security Act, sec. 205 (g). (42 U. S. C., sec. 405 (g)).

respect to the ultimate finding that an employment relationship existed upon the ground that the interpretation of the statute was involved. But the case does not present an unmixed question of law any more than did *Gray* v. *Powell*, 314 U. S. 402, *Shields* v. *Utah Idaho Central R. Co.*, 305 U. S. 177, *South Chicago Coal & Dock Co.* v. *Bassett*, 309 U. S. 251, and *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125. See also *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 400. The issue in *Gray* v. *Powell* was whether on undisputed facts a railway company was a "producer" of coal within the meaning of the Bituminous Coal Act; in the *Shields* case whether a railroad was an "interurban" within the meaning of the Railway Labor Act; in the *South Chicago* case whether an employee was a "member of a crew" within the meaning of the Longshoremen and Harbor Workers Compensation Act; and in the *Rochester Telephone* case whether one company was under the "control" of another within the meaning of the Communications Act. In each of the cases cited, this Court recognized that the question as to whether particular facts brought a person within statutory language was a matter of judgment on which the decision of the administrative official was to be accepted, if supported by evidence in the record, and that such questions of administrative

judgment were not to be treated as pure matters of law for purposes of judicial review.[10]

2. The court below held (R. 1848) that the word "employee" as used in the National Labor Relations Act "must be given its conventional meaning as developed under common law and statutory enactments."

We think that the court erred in attempting to interpret "employee" without giving any weight to the policies and purposes of the National Labor Relations Act. "Employee" is not a common law term.[11] This Court and others have recognized in connection with the word "employee" itself that it "is not a word of art having a definite meaning" but "takes color from its surroundings," and in particular from the objects of the statute in which the word is found

[10] The suggestion of the court below (R. 1848) that these cases are distinguishable by reason of the express nature of the authority granted to the administrative body to decide the issue of exemption is without substance. There clearly was no such express delegation in the *South Chicago* and *Rochester* case, or in *Walker* v. *Altmeyer*, *supra*. And the National Labor Relations Board is authorized to conduct investigations of employee representatives and to make findings as to each of the essential ingredients of an unfair labor practice; since there cannot be a certification of representatives or an unfair labor practice unless the employment relationship is found to exist, the Board's power extends to the making of findings as to whether the persons involved are employer and employee.

[11] The common law was concerned with master and servant, not with employer and employee. See Restatement of Law of Agency, secs. 2, 220; Holmes, *Agency*, 4 Harv. L. Rev. 345, 5 *id.* 1.

(*United States* v. *American Trucking Associations*, 310 U. S. 534, 545–546)." "The word 'employed' * * * must be understood with reference to the purpose of the act, and where all the conditions of the relation require protection, protection ought to be given. * * * Such statutes * * * should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them." *Lehigh Valley Coal Co.* v. *Yensavage*, 218 Fed. 547, 552–553 (C. C. A. 2, L. Hand, J.) certiorari denied, 235 U. S. 705. See also *Warner* v. *Goltra*, 293 U. S. 155, 158; *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50; *South Chicago Coal and Dock Co.* v. *Bassett*, 309 U. S. 251, 259–260.

The approach adopted by the court below would seem to conflict with that of the Circuit Court of Appeals for the Eighth Circuit in *National Labor Relations Board* v. *Blount*, 131 F. (2d) 585, 590, certiorari denied, 318 U. S. 791, in which the court declared that—

> * * * the question whether persons are or are not employees must always depend upon the particular facts *as they are related to the inquiry in which the question is raised*, * * * if the action had been at common law for damages resulting from failure of a master to perform some duty

[12] The use of "employee" in different federal statutes is reviewed in note 29, p. 545, of the *American Trucking* opinion.

owed to a servant, doubtless other considerations would have been 'deemed relevant. [Italics supplied.]

The Board, of course, agrees that "the statutory definition of the term 'employee' embraces all employees in the conventional as well as legal sense" * * * (R. 108, n. 33). But the fact that persons might not be regarded as employees for purposes of imposing liability upon the employer for injuries to third parties does not mean that labor disputes with such persons will not interrupt interstate commerce or that their continuous relationship to the employer is not of the type calling for collective bargaining in the interest of industrial peace. Cf. *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 80. In contrast to the preoccupation of the common law with whether the power to control or veto the conduct of another at a particular point in time justifies the finding of a master-servant relationship, the dominant theme of the Labor Relations Act, collective bargaining, requires an emphasis upon the worker's general status and his continuing relationship to the subject matter of collective bargaining, whether or not the employer might be financially liable for his physical conduct at a particular time. *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 218–219; *Marlin-Rockwell Corp.* v. *National Labor Relations Board*, 116 F. (2d) 586 (C. C. A. 2), certiorari denied, 313 U. S. 594.

A purpose to shape this employment concept to the contours of the collective bargaining relation is manifest not only from the specific inclusion of those who would not be covered at common law, such as strikers and those not the employees of a particular employer (cf. *Phelps Dodge Corp.* v. *National Labor Relations Board,* 313 U. S. 177, 191–192), but also from the exemption of common law employees such as domestic servants and agricultural laborers (Section 2 (3)). *North Whittier Heights Citrus Ass'n* v. *National Labor Relations Board,* 109 F. (2d) 76, 80 (C. C. A. 9), certiorari denied, 310 U. S. 632. The same aim is evident in Section 2 (9) of the Act, which defines "labor dispute" to include a controversy between those who do not stand "in the proximate relationship of employer and employee" (Appendix, p. 28).

In accordance with these principles, many decisions of the Board, involving persons for whose conduct the employer might not have been liable at common law,[13] have brought within the coverage

[13] For example: *Matter of Metro-Goldwyn-Mayer Studios,* 7 N. L. R. B. 662, 686–690 (professional writers working exclusively for one company); *Matter of Seattle Post-Intelligencer,* 9 N. L. R. B. 1262, 1270–1275 (newspaper distributors exclusively for one company, who own their own truck and hire their own assistants); *Matter of KMOX Broadcasting Station,* 10 N. L. R. B. 479 (free-lance announcers and radio artists); *Matter of Connor Lumber & Land Co.,* 11 N. L. R. B. 776 (lumber workers under sole direction of contractor but work on company premises, work functionally coherent with company's business and subject to conditions

of the Act those who do not, in a self-employed capacity, hold themselves out to the general public or a limited portion thereof but are engaged in the day-to-day rendition of service for another in the usual course of a business. It is this type of service that generates problems which constitute the subject matter of collective bargaining; the work of such persons is characterized by con-

established by company); *Matter of Interstate Granite Corp.*, 11 N. L. R. B. 1046 (colorable lease of a department of an enterprise); *Matter of Trawler Maris Stella, Inc.*, 12 N. L. R. B. 415 (fishermen paid in proportion to selling price of catch); *Matter of American Scale Co.*, 19 N. L. R. B. 124 (colorable lease); *Matter of Sun Life Insurance Co.*, 15 N. L. R. B. 817 (insurance canvassers); *Matter of Park Floral Co.*, 19 N. L. R. B. 403 (colorable lease of greenhouses; work of growers a stage in and integral part of company's entire business; leases involved not so much the accomplishment of any specified result as a continuing operation in close association with whole of company's enterprise); *Matter of Edward F. Reichelt et al.*, 21 N. L. R. B. 263 (colorable lease of fur business); *Matter of Kelly Co.*, 34 N. L. R. B. 325 (two truck owners working exclusively for company held employees, three working for others as well held independent contractors); *Matter of Post-Standard Co.*, 34 N. L. R. B. 226 (newspaper distributors, despite method of payment, functionally related to company's business); *Matter of Twentieth Century-Fox Film Corp.*, 32 N. L. R. B. 717 (artists working on premises exclusively for one company held employees; free-lance artists working for various companies held not employees); *Matter of James E. Stark Co.*, 33 N. L. R. B. 1076 (lumber crew working under contractor at hours and wages fixed by company); *Matter of Deep River Timber Co.*, 37 N. L. R. B. 210 (those working under contractors preparing roadways and hauling logs employees of company in view of interrelation of all operations at

ditions which give rise to the method of group, rather than individual, bargaining and to the bargaining sanction of the strike. The facts summarized in the Statement (*supra*, pp. 6–12) fall within this employment concept.

The decision below is important because of its effect on many types of cases (such as those enumerated in note 13, *supra*, pp. 20–22) in which the application of a strict common law test as to the existence of a master and servant relationship might have led to a different result. A ruling by this Court as to the principles to be applied is necessary both to resolve the conflict between the Eighth and Ninth Circuits, and so that the Board may know whether it can continue in the future to be guided by the policies and purposes of the National Labor Relations Act in interpreting the word "employee."

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logging camp, assumption by company of responsibility for wage payments of both contractors, and past bargaining history); *Matter of John Yasek*, 37 N. L. R. B. 156 (truck owners hauling logs principally for one company); *Matter of Harry Murphy*, 37 N. L. R. B. 487 (owners of single trucks hauling logs, compensated at footage rate; no finding as to owners of more than one truck, since evidence unavailable as to whether such owners are engaged in independently established businesses of trucking and transfer); *Matter of Phelps Dodge Corp.*, 34 N. L. R. B. 846 ("contractor" unloading ore on an equal share carload basis); *Matter of Veta Mines*, 36 N. L. R. B. 288, 292 (sections of mine unprofitable for normal company operation, worked by "leasers" who hired "partners"; both "leasers" and "partners" employees).

3. Even if the common law tests be applied without regard for the policies of the National Labor Relations Act, the newsboys should have been held respondents' employees. In our view, the amount of control over them exercised by respondents requires this conclusion. Cf. *Singer Manufacturing Co.* v. *Rahn*, 132 U. S. 518. The court below, in treating the newsboys as independent merchants, seems to have given undue weight to the fact that, as persons not working on respondents' premises, their activities were not controlled to the same extent as are those of inside workers [14] and to the fact that the transactions took the form of a sale.[15]

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[14] For cases holding outside workers with no greater freedom from control than the newsboys to be employees, see, *Andrews* v. *Commodore Knitting Mills, Inc.*, 257 App. Div. 515, 13 N. Y. S. (2d) 577; *Allied Mutuals Liability Ins. Co.* v. *DeJong*, 209 App. Div. 505, 205 N. Y. S. 165 (industrial home workers); *Kaus* v. *Huston*, 35 F. Supp. 327 (N. D. Iowa), aff'd 120 F. (2) 183 (C. C. A. 8) (taxi driver); *Gulf Refining Co.* v. *Brown*, 93 F. (2d) 870 (C. C. A. 4) (oil distributor); *Glielmi* v. *Netherland Dairy Co.*, 254 N. Y. 60, 171 N. E. 906 (milk distributor); *Texas Co.* v. *Zeigler*, 177 Va. 557, 14 S. E. (2d) 704 (oil distributor); *Western Express Co.* v. *Smeltzer*, 88 F. (2d) 94, 96 (C. C. A. 6) (trucker); *Ex parte W. T. Smith Lumber Co.*, 206 Ala. 485, 90 So. 807 (timber sawyer); *Robert C. Buell & Co.* v. *Danaher*, 127 Conn. 606, 18 A. (2d) 697 (securities salesman).

[15] In holding the relationship to involve a series of sales the court below stressed the following considerations which have been held not inconsistent with a personal service relationship: The practice among newsboys of buying and selling valuable corners, *Boehm* v. *Spreckels*, 183 Cal. 239, 191 Pac. 5; the extension of credit, *Pure Baking Co.* v. *Early*

There is a diversity of opinion among the state and lower federal courts as to how common law and related tests should be applied to persons engaged in outside solicitation whose activities are to a large extent subject to control but whose receipt of merchandise often takes the form of a consignment or transaction of sale.[16] Whether such persons are employees is a problem which has frequently arisen under recent social legislation. Indeed, it is often the case, though not here, that employers seek to use this device as a

(E. D. Va.), decided March 24, 1943, Commerce Clearing House, Unemployment Insurance Service, Federal, Par. 9062; dealing in other items, *Press Publishing Co.* v. *Industrial Accident Commission*, 190 Cal. 114, 210 Pac. 820; *Shields* v. *William Freihofer Baking Co.*, 147 Pa. Super. 455, 24 A. (2d) 54.

[16] As to newsboys, compare the cases cited by the court below. (R. 1849) with *Salt Lake Tribune Publishing Co.* v. *Industrial Commission*, 99 Utah 259, 102 Pac. (2d) 307; *Pacific Employers' Insurance Co.* v. *Industrial Accident Commission*, 3 Cal. (2d) 759, 47 Pac. (2d) 270, reversing 38 Pac. (2d) 809; *In re Scatola*, 282 N. Y. 689, 26 N. E. (2d) 815; *Wilson* v. *Times Printing Co.*, 158 Wash. 95, 290 Pac. 691; *Hampton* v. *Macon Printing Co.*, 64 Ga. App. 150, 12 S. E. (2d) 425; *Gallaher* v. *Ricketts*, 187 So. 351, annulled 191 So. 713 (La.). Compare, also: *Matter of Electrolux Corp.*, 288 N. Y. 440, with *Electrolux Corp.* v. *Danaher*, 128 Conn. 342, 23 A. (2d) 135 (sellers of vacuum cleaners); *Schomp* v. *Fuller Brush Co.*, 124 N. J. L. 487, 12 A. (2d) 702, aff'd 126 N. J. L. 368, 19 A. (2d) 780, with *Fuller Brush Co.* v. *Industrial Commission*, 99 Utah 97, 104 Pac. (2d) 201 (Utah, 1940) (sellers of brushes); *Milk Wagon Drivers Union* v. *Lake Valley Farm Products Co.*, 313 U. S. 391, and *Creameries of America* v. *Industrial Commission*, 98 Utah 571, 102 Pac. (2d) 300, with *Mountain Meadow Creameries* v. *Industrial Accident Commission*, 25 Cal. App. (2d)

means of converting salesmen into independent dealers for the purpose of avoiding the effect of such statutes. Cf. *Matter of Electrolux Corp.*, 288 N. Y. 440. It is important both in the interpretation of the National Labor Relations Act and of such legislation as the Social Security Act and the Fair Labor Standards Act that the lower courts be advised whether "employee" is to be interpreted in an enlightened manner which gives effect to the realities of economic relationships and the power of the employer or is to be given a narrow construction such as the court below applied in the case at bar.

CONCLUSION

The questions raised by the decision below are of substantial public importance. The decision fails to follow applicable decisions of this Court

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123, 76 Pac. (2d) 724 (sellers of dairy products); *In re Foy*, 116 Pac. (2d) 545 (Wash.) with *In re Levine*, 283 N. Y. 577, 27 N. E. (2d) 439 (distributors of cooking utensils); *Globe Grain & Milling Co.* v. *Industrial Commission*, 98 Utah 36, 91 Pac. (2d) 512, amended, 98 Utah 48, 97 Pac. (2d) 582, with *Moorman Mfg. Co.* v. *Unemployment Compensation Commission*, 230 Iowa 123, 296 N. W. 790 (sellers of feed); *In re Fidel Ass'n*, 287 N. Y. 626, 39 N. E. (2d) 265, with *Robert C. Buell & Co.* v. *Danaher*, 127 Conn. 606, 18 A. (2d) 697 (sellers of securities). See also Wolfe, *Determination of Employer-Employee Relationships in Social Legislation*, 41 Col. Law Rev. 1015, 1033–1034; *Issues Involved in Determining Eligibility Under the Old Age and Survivors Insurance Program*, Social Security Yearbook, 1941, pp. 47–51; *Some Aspects of Coverage Under Insurance Provisions of the Social Security Program*, Social Security Yearbook, 1940, pp. 74–75.

and conflicts with those of other Circuit Courts of Appeals both on the merits and as to the proper scope of judicial review. It is respectfully submitted that this petition for a writ of certiorari should be granted.

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SEPTEMBER 1943.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Title 29, Sec. 151, *et seq.*) are as follows:

SECTION 1. * * *

* * * * *

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SEC. 2. When used in this Act—

* * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall

not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

* * * * *

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes

of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in

whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

SEC. 10. * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

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Sec. 209 (42 U. S. C., sec. 409) 51
Miscellaneous:
Alford, L. P., ed., Cost and Production Handbook (1934), p. 108 72
Ashworth, J. H., "The Helper and American Trade Unions," Johns Hopkins Studies in Historical and Political Science, Series XXXIII, No. 3 (1915), Ch. II, "The Hiring and Compensation of the Helper," pp. 67–77 72
Bulletin of the Industrial Commission of Ohio, Division of Investigation and Statistics, Report No. 24 (1916), Job Selling in Industrial Establishments in Ohio 71
Commons, John R. and Associates, History of Labour in the United States, Vol. I (1936), p. 604 34
79 Cong. Rec. 7670–7671, 7678, 7658, 7653, 7655, 7654, 7661 37
Dobb, M., Wages (1938), pp. 76–77 72
Gall and Smethurst, A Critical Analysis of the Federal-State System of State Unemployment Compensation Laws, 3 Law and Contemporary Problems, pp. 123, 127 ... 37
Hamilton, W. I., Employer-Employee Relations in Hotels (1925), pp. 17–18 71
Statements of Bruce Hannon, Secretary, Maritime Federation of the Pacific, in Hearings before the Committee on Merchant Marine and Fisheries, House of Representatives, 76th Cong., 1st Sess., on H. R. 4051, May 10, 19, 22 (1939), pp. 17–19 71

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Hutchins, Grace, Labor and Silk (1929), p. 106 72
Industrial Service Bureau, Bulletin No. 1 (1918), Hiring and Firing Suggestions for Employers, p. 3 71
Issues Involved in Determining Eligibility Under the Old Age and Survivors Insurance Program, Social Security Yearbook, 1941, pp. 47–51 ..... 43, 82
Leidy, Paul A., Salesmen as Independent Contractors, 28 Mich. Law Rev. 365 76
Lundberg, F., Imperial Hearst (Modern Lib. Ed. 1937), pp. 161, 195, 300 68
Mack, Francis, Waste Elimination Incentives (1928), p. 35 72
McDaniel, H. B., The American Newsboy (1941), p. 17 ..... 67, 74
Monthly Labor Review, Vol. XXII, No. 2 68
Motley, J. M., Apprenticeship in American Trade Unions, Johns Hopkins Studies, Series XXV (1907), p. 22 72
Official Directory, Pressmen's Union (July 1942) 68
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Service Bureau News Bulletin, Pressmen's Union (Dec. 1942) 68
Some Aspects of Coverage Under Insurance Provisions of the Social Security Program, Social Security Yearbook, 1940, pp. 74–75 ..... 43, 82
U. S. Dept. of Labor, Bureau of Labor Statistics, Bulletin No. 555 (1932), Cargo Handling and Longshore Labor Conditions, p. 72 71
Webb, Beatrice and Sidney, Industrial Democracy (1920), pp. 315, 459 72
Wolfe, Determination of Employer-Employee Relationships in Social Legislation, 41 Col. Law Rev. 1015, 1033–1034 ..... 42, 55, 79

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 336

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HEARST PUBLICATIONS, INCORPORATED

No. 337

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

STOCKHOLDERS PUBLISHING COMPANY, INC.

No. 338

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HEARST PUBLICATIONS, INCORPORATED

No. 339

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE TIMES-MIRROR COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinions in the court below (R. 1843–1852) are reported at 136 F. (2d) 608. The findings of fact, conclusions of law, and orders of the National Labor Relations Board (R. 331–351, 454–479) are reported at 39 N. L. R. B. 1245, 1256. The decisions of the Board in prior representation proceedings which form part of the record in these cases (R. 76–146, 187–197, 237–240) are reported at 28 N. L. R. B. 1006, 33 N. L. R. B. 941, and 36 N. L. R. B. 285.

JURISDICTION

The decrees of the circuit court of appeals were entered June 10, 1943 (R. 1852–1854). The petition for writs of certiorari was filed September 9, 1943, and was granted October 25, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the Board's ultimate finding that certain individuals are employees within the meaning of the Act is to be accepted by the courts when not unreasonable or is to be subjected to *de novo* judicial review.

2. Whether the Board properly found that persons selling newspapers who are subject to the supervision and control of the publishing

company are employees within the meaning of Section 2 (3) of the Act.

3. Whether the context of the Act furnishes the basis for a definition of employment broader in scope than the common law definition of a servant.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*) are set forth in the Appendix, *infra*, pp. 84–89.

STATEMENT

In proceedings instituted by four separate petitions for investigation and certification of representatives under Section 9 (c) of the Act, filed by the Los Angeles Newsboys Local Industrial Union, No. 75, affiliated with the Congress of Industrial Organizations, herein called the Union, the Board issued a decision and direction of elections. The Board found that respondents were engaged in commerce within the meaning of the Act, that their newsboys were employees under Section 2 (3), and that the regular full-time newsboys vending each separate newspaper constituted a separate appropriate bargaining unit. (R. 77–121; 28 N. L. R. B. 1006.) The Union was selected by a majority of the eligible employees in each election and as a result was certified by the Board as the representative of each of respondents' newsboys within the ap-

propriate unit (R. 187–197, 237–240; 33 N. L. R. B. 941, 36 N. L. R. B. 285).

Thereafter, in proceedings under Section 10 (c) of the Act, the Board, on March 30, 1942, issued decisions finding that each of the respondents, subsequent to the certification of the Union, had refused to bargain collectively with it, thereby engaging in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act (R. 331–350, 455–479; 39 N. L. R. B. 1245, 1256). The Board ordered each respondent to cease and desist from refusing to bargain with the Union or engaging in any like or related acts or conduct interfering with, restraining, or coercing its employees; upon request to bargain collectively with the Union; and to post appropriate notices (R. 347–350, 475–479; 39 N. L. R. B. 1245, 1256).

The evidence in support of the Board's finding that the newsboys are employees of the respective respondents (R. 88–111, 342–344, 466–473), may be summarized as follows:

Respondents publish four newspapers;[1] the persons within the appropriate bargaining units were stated by the Board to be as follows:

News and Herald: All full-time newsboys and checkmen who are engaged to sell the News or the

[1] Hearst Publications, Incorporated, publishes the Los Angeles Evening Herald and Express, an evening paper published daily except Sunday, and the Los Angeles Examiner, a morning paper published daily, including Sunday (R. 49, 69). The department of Hearst Publications, Incorporated, which publishes the Los Angeles Herald and

Herald, as the case may be, within Los Angeles, California, excluding bootjackers,[2] temporary, casual, and part-time newsboys (R. 115). There were 349 such persons within the News unit and 209 within the Herald unit at the time of the election (R. 189–190).

Times and Examiner: All newsboys engaged in the street sale of the Times or the Examiner, as the case may be, at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles (and in the case of the Times, Glendale), California, except temporary newsboys (R. 115–116). There were 457 such persons within the Times unit and 453 within the Examiner unit at the time of the election (R. 191, 238).

The persons in the appropriate bargaining units are not, as the name implies, *boys* but are mature or elderly men, often with families to support, who depend upon their earnings from the distribution of respondents' newspapers on the streets as their source of livelihood (*Herald*, R. 713, 859–860, 878, 945; *Examiner*, R. 1380, 1419,

Express, is herein called the Herald; that which publishes the Los Angeles Examiner is herein called the Examiner. Respondent Stockholders Publishing Co., Inc., publishes the News, a paper published daily except Sunday (R. 61), and respondent The Times-Mirror Company, publishes daily, including Sunday, the Los Angeles Times, a morning paper, which is herein called the Times (R. 64–65, 1169).

[2] A bootjacker is a newsboy who sells to the general public at places other than established corners (R. 112).

1438, 1498–1499, 1530, 1619; *Times,* R. 1168, 1194, 1284, 1309–1310, 1632; *News,* R. 558–559, 859–860.[4] Many of them have long service records (*Herald,* R. 599, 713, 727, 735, 746, 799–800, 804, 875, 884, 896, 930, 939, 945, 981, 1117; *Examiner,* R. 1397, 1404, 1425; *Times,* R. 1284, 1315; *News,* R. 749, 890, 981, 1117–1118); they form a stable group, subject to little fluctuation (*Herald,* R. 599, 863–864; *Examiner,* R. 1381–1382, 1439–1440, 1521; *Times,* R. 1284, 1286).[5] They differ in these respects from schoolboys who serve a home delivery route and are known as carriers,[6] or who act as part-time street salesmen (R. 860–861, 865, 1128). The latter are expressly excluded from the unit found by the Board to be appropriate (R. 114–116) and the Board has not passed upon the applicability of the Act to such persons.

Included by the Board within the unit appropriate for collective bargaining with the News and the Herald are checkmen who differ from other newsboys in that they are assigned a "main

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[4] Throughout this brief, reference will be made to the respondents collectively except where an individual factual variation requires a reference to the specific respondent. The record references following any statement referring to respondents collectively will indicate what evidence supports the statement with respect to each respondent in the following manner: (*Examiner,* R. —; *Herald,* R. —; *Times,* R. —; *News,* R.—).

[5] District Manager Woods of the Herald testified that he had worked with virtually the same crew for 15 years (R. 599).

[6] Street salesmen are called "hustlers" (R. 504–521, 613–629, 1281).

spot"[6] where they receive, in addition to the papers they themselves hawk, papers which they in turn distribute to the "off-spot" newsboys, keeping a written record of the number so delivered to others, receiving the returned papers and accounting to respondents' district managers (*Herald,* R. 588–589, 708–709, 784–785, 791, 821–822; *News,* R. 749–750, 790–792, 805, 808, 833–834, 899, 1089–1093, 1118, 1124, 1129).[7] Each Herald checkman is responsible for a group of from 1 to 17 "off-spot" boys, who are designated by the publisher, and to whom he supplies papers in accordance with instructions (R. 605, 611, 616–629). In the business area such checkmen exercise discretion as to the number of papers to be allotted each "off-spot" boy (R. 607).

Though designated as "wholesalers" (*Herald,* R. 605; *News,* R. 1089) the checkmen do not sell the papers to the "off-spot" boys and there is no differential between the price which they pay for

[6] The corner which does the best business is known as the "main spot" and the other corners as the "off spots" (R. 1437, 1381).

[7] Herald District Manager Plotkin thus described the checkman's duties (R. 694–695): "Well, when I put a man to work on the corner, I tell him what the duties are, such as taking charge of the boys, and supplying them with papers, and seeing that they are working, and I tell him the first edition comes out around a quarter of 10:00 or 10:00 o'clock, and so he knows that he should be out there at that time. * * * The instructions are that he supply the boys with papers on the off corners, and then he collects from them, and then he in turn checks in to me."

the papers and the price charged the newsboys to whom they distribute the papers (R. 704, 709, 792, 810, 843). For the service of distributing and collecting for the papers, the checkmen receive from the News and the Herald weekly salary checks for sums constituting a flat wage which bears no relationship to the volume of papers handled but depends in amount upon the importance of the corner involved and the amount of time spent in doing the work (*Herald,* R. 636, 605–607, 616–629, 784–785, 810, 841; *News,* R. 1089–1093, 1129). The checkman are covered, insofar as they perform the above-described services, by other Federal legislation which applies to employees (*Herald,* R. 636, 784, 916–917, 936; *News,* R. 1090) and are carried on the pay rolls of the papers they serve (*Herald,* R. 606, 636; *News,* R. 1090).[4] At the time of the hearing the Herald employed 121 checkmen (R. 616–625) and the News employed 110 checkmen (R. 1091–1093). They constituted therefore, in the case of the Herald, approximately one-half of the number in the appropriate unit; in the case of the News, approximately one-third of the number (R. 189–190). Aside from the above-de-

[4] A description of the functions of the checkman is contained in *Pacific Employers Insurance Co.* v. *Industrial Accident Commission*, 3 Cal. (2d) 759, 47 P. (2d) 270, and *Associated Indemnity Corp.* v. *Industrial Accident Comm.*, 128 Cal. App. 104, 16 P. (2d) 774, where such individuals were found to be employees under the California Workman's Compensation Act.

scribed duties which consume a few minutes a day (R. 785), the checkmen are in the same relationship to the newspapers which they serve as the other newsboys in the bargaining units, who, in fact, may be promoted to the status of checkmen after serving successfully as "off-spot" boys for a period of time (R. 707).

While only the Herald and the News employ checkmen, the Examiner in effect employs the same system of distributing its papers. "Main-spot" boys, assigned by the Examiner to these duties, leave copies of the paper with the "off-spot" boys, and later collect and account to the Examiner (R. 1381, 1437–1438, 1459–1464, 1478–1479, 1495–1496, 1521–1522, 1603–1605, 1609, 1614–1615, 1625). The sole divergence from the practice of the News and the Herald in this respect is that the "main-spot" boy on the Examiner does not bear the title "checkman" and, instead of receiving a fixed salary check, receives a varying sum in cash (R. 1437–1438), or is required to play his part in the newspaper's distribution system without compensation (R. 1468–1469, 1478–1479). The Times does not utilize "main-spot" boys; the papers are distributed directly to each newsboy in his district by the district manager (R. 1157).

The newsboys, including the checkmen, are "hired" and "fired," disciplined, directed, and controlled (see evidence collected pp. 13–21, *infra*) by respondents through supervisory employees known as the "district manager" or "district

man" (R. 549, 1180; *Herald,* R. 605–607; *Times,* R. 1156, 1254; *Examiner,* R. 1373, 1432; *News,* R. 1125, 1127–1129).[9] Each district manager is in immediate charge of the distribution and sale of papers in his particular district (*Herald,* R. 547–548, 558, 681; *Examiner,* R. 1373–1376, 1432–1434; *Times,* R. 1152, 1155–1156; *News,* R. 1080–1081). Each respondent has about 20 to 25 district man-

[9] That the district managers are employees of the respective respondents, as the Board found (R. 90, 468–469), is admitted by all of the respondents (*Examiner,* R. 1373, 1432; *Herald,* R. 605–606; *Times,* R. 1156, 1346), except the News. The News district managers are not compensated on a straight salary basis; they receive papers at one "wholesale" price and distribute them to the newsboys at another (R. 1082, 1127, 1130). They receive, however, a minimum guarantee from the News (R. 1128–1129). The record shows that they operate in the same manner as the district managers for the Herald, Examiner, and Times (R. 750, 789–792, 808, 810–811, 835, 903, 908, 1082–1083, 1098–1099, 1108, 1109, 1116). They "hire," "fire," supervise, distribute placards and racks belonging to the News, and hand out salary checks from the News to the checkmen (R. 750, 789–792, 811, 832–835, 903, 1082–1083, 1098–1099, 1108–1109, 1116, 1118–1120). The News offered no evidence to show that their district managers were not employees. Under all these circumstances, the Board was amply justified in concluding (R. 468–469) that the district managers of the News had no different status than the district managers for the other papers. However, in view of the fact that all the 200 "off-spot" boys in the News unit receive their papers through and account to the 110 News checkmen (R. 749–750, 790–791, 805, 808, 833–834, 899, 1089–1093, 1118, 1124, 1129), who, to the extent of such services, are admittedly employees (R. 1090–1093, 1637), the exact status of the News district man is of no particular importance to the case.

agers (*Herald,* R. 616–629, 643–644; *Examiner,* R. 1364; *Times,* R. 1155, 1298; *News,* R. 1126). The district manager works with a fixed and identified crew of checkmen or "main-spot" and "off-spot" boys (*Herald,* R. 572; *Examiner,* R. 1383–1384; *Times,* R. 504–521; *News,* R. 1091–1093). The number of checkmen or "main-spot" and "off-spot" boys under each district manager varies according to the nature of the district, whether it is residential or business. Illustrative, however, is Herald District Manager France with 13 checkmen and 15 other newsboys (R. 707), News District Manager Moore with 10 checkmen and 20 to 30 other newsboys (R. 1126), Times District Manager Dyer with 31 to 33 newsboys (R. 1284) and Examiner District Manager Volanty with 20 "main-spot" boys and 13 other newsboys (R. 1521). The district managers assign the newsboys to their locations (*infra,* p. 14), and form the primary point of contact between the publisher and the newsboy. District Manager Plotkin of the Herald accurately describes the job: "my duties consist of supplying the men papers on the corners and collecting from them in the evening and going around and seeing that they are at work" (R. 681; see also, *News,* R. 1125, *Times,* R. 1155–1159, 1281; *Examiner,* R. 1374–1380).

In order to insure effective presentation of the paper to the public, the district manager keeps the newsboys informed as to how news is develop-

ing, what special events require their presence, how to call important headlines, and how to play up special features (*Herald*, R. 578–579, 598–599, 794, 806–807, 873; *Examiner*, R. 1363; *Times*, R. 1220). Finally, an important aspect of his functions consists of fixing the amount of papers to be allotted to each newsboy in his district (*Herald*, R. 607, 910–911, 1052; *Examiner*, R. 1424–1425, 1485, 1589–1590, 1602–1603, 1606, 1624; *Times*, R. 1156–1157, 1178, 1285, 1293–1294; *News*, R. 789).[20] Even when a newsboy is allotted papers on a standing order based upon his past experience, as in the case with the Herald in the residential areas, the newsboy is permitted only to vary the number received from the district manager in a particular edition and not the total for the day (R. 607, 771–772, 782–783, 785–786) and has, in addition, no control over the number of extra copies which the district manager allots him (R. 709–710, 752–753).

Both the Examiner and the Herald employ, in addition to a district manager, men known as "checkers" who patrol the district noting whether the checkmen and newsboys are on the job and performing their duties (*Examiner*, R. 1446–1447,

[20] Illustrative is the testimony of Herald Newsboy Kahn that, "I have got to take what they give me" (R. 910); of Newsboy Steuart of the News that he is allotted as many papers as the district manager "figures I should have" (R. 789); of Examiner Newsboy Nixon that he had "positively no voice in" determining the number of papers he received (R. 1606).

1450–1451, 1484–1485; *Herald,* R. 575–577, 748, 900–901). The checkers make written reports to the Herald and the Examiner, and in the event any newsboy is to be discharged, disciplined, or reprimanded, a written instruction to that effect is given to the district manager, who in turn takes appropriate action (*Examiner,* R. 1446–1451, 1484–1485; Herald, R. 575–578, 748, 900–901). On the News and the Times the district managers themselves keep a close check on these matters (*News,* R. 733, 737–738, 756, 777–778; *Times,* R. 1221–1222, 1330–1333).

The district managers of each paper and the checkers on the Herald and Examiner are under a circulation manager (*Examiner,* R. 1349, 1352, 1446–1448; *Herald,* R. 544–545, 575–578; *Times,* R. 1151; *News,* R. 1079). In addition, certain of the papers have an intermediate supervisory official between the circulation manager and the district manager, known variously as branch manager, supervisor of street sales, or street sales manager (*Herald,* R. 548–549, 574, 584, 640; *Examiner,* R. 1362–1363; *Times,* R. 1152, 1154). On occasions newsboys who were "fired" by their district manager would appeal to one of these intermediate supervisors (*Herald,* R. 730–731, 902; *Times,* R. 1161). Thus, after Times Newsboy Fields was removed from his corner for tardiness, he was reinstated by the supervisor of street sales with instructions to be at his corner on time (R. 1330–1333). Cohen, super-

intendent of street sales for the Times, testified that he took up an average of four or five such complaints a week from newsboys (R. 1162, 1176–1177). Changes in the price of Heralds, or in the manner of display, or announcements of the time when an extra is to be on the streets are relayed from the circulation manager to the branch managers, who inform the district managers, who in turn instruct the checkmen and newsboys (R. 562–564, 579). The Herald superintendent of street sales, Bell, often walks or drives around the streets, or sends out an assistant, to see how papers are moving, and in the event he finds a newsboy absent from his corner he takes the matter up with the newsboy or sends an assistant to do so (R. 591). When a report comes into the office that the newsboy on an important corner is absent, the circulation manager or district manager sends out a boy from the staff available for the purpose at the office (R. 551, 566–567).

The newsboy obtains employment by applying to the district manager, who then assigns him to a particular spot if an opening is available (*Examiner,* R. 1404, 1436, 1438–1439, 1453–1454, 1456–1457, 1494–1495, 1527; *Herald,* R. 590, 595, 606, 638, 696, 714, 746, 848–849, 879–880, 924, 1026; *Times,* R. 1181–1182, 1185, 1230, 1250, 1212–1214, 1254, 1160; *News,* R. 1098–1099, 1108, 1116). All respondents also furnish transportation to the newsboys from the plant to their respective cor-

ners and after work is over bring them back (*Examiner,* R. 1566; *Herald,* R. 995–996; *Times,* R. 1157, 1180, 1183–1185, 1170–1171, 1202, 1213–1215, 1223–1225, 1228, 1246, 1252, 1254, 1345; *News,* R. 1115).[11]

Not only are the newsboys subject to removal at will by the district manager without liability to the publisher but they are also subject to transfer or disciplinary lay-off by the district manager (*Herald,* R. 483, 601, 717, 729–731, 739–740, 741, 746–747, 801–802, 821, 876, 878, 901–902, 917–918, 1121–1123, 1146–1147; *Examiner,* R. 1404–1408, 1410–1411, 1455–1456, 1458–1460, 1470, 1477–1478, 1525; *Times,* R. 1161, 1185, 1187–1189, 1191–1192, 1221–1223, 1329–1333; *News,* R. 1109).[12] Besides

[11] The Times hires 12 cars for the sole purpose of transporting newsboys to their spots every night (R. 1170–1171, 1345).

[12] Illustrative are the following instances:

With respect to the Examiner, a newsboy was transferred to a less desirable spot despite his protest that he "wouldn't make even a dollar" there (R. 1455–1456), on another occasion the same newsboy was told by his district manager that "I am not going to use you" (R. 1470); and another newboy was laid off for one night because of a complaint that he wore a C. I. O. button (R. 1410–1411); with respect to the Herald, on several occasions newsboys were laid off for having too many returns (R. 901–902, 876), another newsboy was laid off for a few days for being drunk (R. 601), on another occasion a newsboy was laid off for 2 or 3 days because he left his corner to go to the toilet (R. 900–901), one newsboy was threatened with discharge for selling papers for less than the advertised price (R. 878), and a number of newsboys were laid off for several days or transferred to different corners because of complaints against them and despite the fact that the district manager found some of the

the control implicit in respondents' removal and disciplinary powers,[13] respondents exercise extensive day-to-day supervision over the manner in which the papers are sold and the diligence used in selling them.[14]

Instances of the detailed supervision to which the newsboys are subjected are commonplace in the record. Thus, instructions were given to the News and Herald newsboys with respect to the exact manner in which they should hold the two papers.[15] News and Herald district managers in-

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complaints to be without merit (R. 1146–1147, 739–740, 746–747); with respect to the Times, two corners were consolidated without consulting or advising the newsboys involved, thereby depriving one of them of work until another corner became vacant (R. 1329–1330), one newsboy was removed for leaving his spot to take refuge under a drive-in stand during a rainstorm (R. 1221–1223), and another newsboy was laid off for arriving late at his corner (R. 1330–1333); in the case of the News, a newsboy was transferred to another corner without being given any choice in the matter (R. 1109).

[13] These powers were succinctly summarized by District Manager Volanty of the Examiner and Woods of the Herald during arguments with their newsboys by such reminders as: "Don't forget, I am still your boss" (R. 1406–1408, 716–717).

[14] The latter is a natural consequence of the district manager's and checkman's duty "to see that they [the newsboys] are working" (R. 681, 694).

[15] On November 1, 1937, the Herald and the News entered into an agreement for the handling of both papers by one set of newsboys (R. 558–559). Those handling the News were for the most part eliminated and the Herald boys were told to handle both papers (R. 564–565, 692–693, 749, 1066, 1071, 1635–1636).

structed the newsboys that, in holding both papers, the News was to be folded and placed on the outside of the Herald so that the headlines of both papers would be visible (*News*, R. 725–726, 750–751, 1120; *Herald*, 563–564, 642, 796, 832–833). Branch Manager Brewster of the Herald testified that he requires his district managers to see that the Herald is carried on the inside of the boy's arm next to the body and the News folded and displayed on the outside (R. 642–643). In the case of the News, the district manager directed a checkman to keep one of his "off-spot" boys in a traffic spot at certain times (R. 1118–1120). In the case of the Times, a newsboy was instructed at various times to "work traffic and cover this drive-in stand"; to "watch them cars in there every 10 or 15 minutes"; to "go in the bar and flash your papers," but that the management objected to "blast[ing] your headline"; to "hold your paper up and give the customers a chance to see the paper"; not to "cause any disturbance * * * [and] go right back to your safety zone" (R. 1218–1219). Another newsboy was ordered not to handle the Examiner (R. 1243–1244). In the case of the Herald, the district manager instructed a newsboy to "always play that safety zone," an instruction which the newsboy followed although he could sell more papers by remaining on his corner (R. 909–910), and another newsboy was instructed to stand in the traffic zone to catch the

autos (R. 818). In the case of the Examiner, a newsboy was at various times directed to "work the market around there and watch the corner, and also work the white [traffic] line," and to "watch the Times guy" to see that he did not reach customers first (R. 1458, 1460). Another newsboy was asked to insert Legion supplements into papers at the time of the American Legion Convention, an assignment which lasted 1 hour, and also to supply papers to the Phoebe Hearst Post free of charge (R. 1482–1484). Further examples are set forth in the margin.[16]

[16] Examiner: When Newsboy Latham had sold all but one paper of an early edition and was sitting on a fireplug, District Manager Jackson criticized him for not working and ordered him to "get out there and sell those papers" (R. 1461–1462); on another occasion Jackson put an "off-spot" boy at Latham's intersection despite the latter's protest that it would cut his earnings (R. 1463–1464, 1473); on another occasion Jackson ordered Latham not to handle the Times (R. 1455). When Newsboy Deering was assigned to a spot in front of the entrance to the Pacific Electric Station, District Manager Pierce ordered Deering to stand on the sidewalk despite the latter's protest that he could sell more papers by standing directly against the building (R. 1497).

Herald: District managers refused to let the newsboys select their own relief men when they wanted to take a vacation; would not permit the newsboys' friends to "hang around" the corner; and warned the boys to discontinue certain practices concerning which complaints had been received (R. 716–717, 754–755, 1040).

Times: District Manager McKinney ordered Newsboy Eley to leave a paper at the drug store for which Eley would not be charged, to go to a certain liquor store and

The amount of time which the newsboys must devote daily to selling papers is measured not by the disposal of a fixed quantity of papers but by continuous selling activities for a relatively definite number of hours (*supra*, p. 5; *Herald*, R. 598, 613, 942, 948, 1026–1027; *Examiner*, R. 1430, 1467–1468, 1480–1481, 1585, 1601–1602, 1608; *Times*, R. 1159, 1202–1203; *News*, R. 1098–1099, 1125–1126). They are required to be at their posts from the time the papers customarily arrive until the close of the selling day and failure to adhere to this requirement results in reprimand or discipline (*Herald*, R. 590–591, 727–728, 747–748, 793, 795, 830–831, 880–881, 896–899, 928–929, 942–943;

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restaurant where he would make a sale, and then to come "back to the corner, to work through the market, and get out on the traffic line" (R. 1183–1184); when Eley was given a "main spot" on the corner, McKinney gave him directions about covering a newly completed "drive-in stand" and told him to tell the "off-spot" man what to do (R. 1186, 1187); when sales declined, District Manager McKinney removed the "off spot" man, ordered Eley to take care of that spot also, and directed him to give some papers to the Examiner boy on that corner but to charge him 3 cents per paper instead of the "wholesale" price (R. 1191–1192); District Manager Curtis reprimanded Newsboy Roberts for taking refuge in a drive-in stand during a rain, telling him he had to get out and hustle in the downpour (R. 1222).

News: Newsboy Steuart was repeatedly ordered by the district manager for the News always to keep a News on display in the rack (R. 756, 777–778). So was Newsboy Smith (R. 1098). Newsboy Spampinato was told by the News District Manager to put certain advertising placards on a box (R. 835).

Examiner, R. 1380, 1394–1395, 1398, 1434, 1446–1447, 1462–1463, 1487, 1587–1588; *Times*, R. 1184, 1202–1203, 1224–1225, 1250–1251, 1330–1333; *News*, R. 733, 737–738, 1098–1099, 1119–1120).

Illustrative are the comment of Herald Newsboy Bryant that he was not his own boss because "I can't open my business when I like and can't close it when I like" (R. 928), and the testimony of Herald Newsboy Kadesh that he arrived in the morning before the papers did and was not permitted to quit before closing time even though he had sold out (R. 793–795). Similarly, an Examiner newsboy testified in response to the question why he remained on the corner on Saturday afternoons when he sold only a very few papers (R. 1608), "Well, if I didn't stay I would be summarily discharged. * * * You have to stay, in other words, it is part of the job." Times Newsboy Eley was instructed "to work until 11 o'clock," at which time he always checked in regardless of whether or not he had sold out (R. 1184, 1202–1203); and another Times newsboy was told by his district manager to report each day at 4:30 (R. 1250–1251). In the case of the News, the district manager ordered a newsboy to be at his corner between 4:30 and 5:00 in the morning and work until 10:30 and check in at the Pacific Electric Station (R. 1098–1099), and reprimanded another newsboy for being away from his corner, stating "You know that you have to be

all the time on this spot" (R. 733, 737–738). Additional examples are set forth in the margin.[17]

In addition to the control exerted over the extent of the newsboys' selling territory and over the number of units to be sold (see, *supra*, pp. 12–14), respondents further control the newsboys' earn-

[17] Herald: The district managers reprimanded a newsboy who left early because he had sold out, stating, "You know better than to quit before 8" (R. 795); instructed another newsboy to make sure that his relief man did not leave 2 minutes early (R. 747–748); and warned another newsboy, who left his corner to eat lunch, that if he did not watch out he would be removed from his corner (R. 728). Bell, Superintendent of Street Sales, testified that when he made an inspection tour and found newsboys who were not on their corners, he asked them "where they have been so long; why didn't they stay on their corner" (R. 590–591).

Examiner: District Manager Pierce of the Examiner reprimanded a newsboy for being away from his corner for a while, warning him that the spot had to be covered during the entire period "regardless of whether there is one paper sold here" (R. 1484–1485). A number of newsboys testified that they had to "check in" at a time and place designated by the district manager (R. 1468, 1487, 1587–1588, 1616, 1621); one newsboy was told to be at his corner at 6 o'clock although the papers did not arrive until 6:45, and to "check in" at a designated cafe (R. 1623); another newsboy, who was discovered eating lunch in a drug store, was reprimanded and told to "get a sandwich and stay outside on the corner" (R. 1462–1463). The district managers admitted that they "tell them [newsboys] what time [they] will be" at a corner to "dump" the papers, and designate the time and place for "checking in" (R. 1380, 1394–1395, 1398, 1434). It was the duty of the checkers to report newsboys who were off their corners (R. 1446–1447).

Times: Newsboy Roberts was permitted to take a day off only after his district manager had obtained a relief man;

ings. The district manager charges the newsboy for the difference between the number of papers distributed to him and the number returned unsold (*Herald,* R. 1052;[18] 903–904, 911–913; *Examiner,* R. 1384–1385, 1485; *Times,* R. 1195; *News,* R. 847, 851, 888, 1104). The amount charged by the district manager for each paper is set by respondents[19] and is less than the selling price to the public, which is also determined by respondents and published on the masthead of each paper (*Herald,* R. 570, 655, 878, 1040; *Examiner,* R. 1366, 1566; *Times,* R. 1158, 1160, 1194–1195, 1232, 1258; *News,* R. 1084, 1128). The sale of newspapers by the newsboy thus involves, as a general rule, neither risk of capital nor free opportunity for profit since the

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Roberts was then told to "go ahead and report back tomorrow evening" (R. 1224–1225). Shortly after Newsboy Fields had been removed from his corner for tardiness, he was reinstated by the Supervisor of Street Sales, with instructions to be at his corner on time (R. 1330–1333).

News: As a result of an agreement entered into in 1937 between the News and the Herald, the News has, for the most part, used Herald newsboys (*supra,* p. 16). For this reason, the record contains fewer instances specifically pertaining to the News.

[18] The Herald credits the newsboy with all unsold returned papers in the downtown area; in the residential district where the boys have standing orders, they are credited with the return of all papers in excess of such orders and in addition are allowed credit by the branch manager or the district manager in the event that an unusually large number of papers in the standing order are unsold (R. 648–650, 651, 657–658, 709–710, 752–753).

[19] Except in the case of the News where the district manager sets the figure (R. 91, but see R. 1126–1128).

stock of papers he has available for sale, the market in which he may sell them and both purchase and selling prices are unilaterally fixed by respondents. The financial return to the newsboy is purely a return for labor.

To further the effective distribution of the newspapers, respondents supply the newsboys with racks, change aprons, advertising placards and similar equipment and the district managers furnish specific instructions to their newsboys with regard to the display of newspapers in the racks and the posting of advertising materials, (*Examiner,* R. 1366, 1367, 1371–1372, 1369, 1485–1487, 1500–1501, 1586, 1606–1607; *Herald,* R. 590, 732, 755–756, 810, 813, 834–835, 838; *Times,* R. 1163, 1165, 1167, 1168, 1172, 1190–1191, 1217, 1220–1221, 1251–1256; *News,* R. 810–811, 835, 903, 908, 1082–1083, 755–756, 1098, 1105, 1106–1107).

Some, but not all (*Herald,* R. 904; *News,* R. 1104, 1111; *Times,* R. 1243–1244, 1628; *Examiner,* R. 1419, 1473, 1592, 1611, 1622), of the newsboys sell publications other than those involved herein, such as magazines or newspapers of noncompeting character [20] (*Herald,* R. 718, 734–735, 779–780, 806, 822, 837, 849, 908, 932, 941–942, 945–946, 1027–1028; *Times,* R. 1260–1267; *Examiner,* R. 1464–1465, 1471–1474). The sale of such publications constitutes only a relatively minor aspect of the

[20] *E. g.*, Ham and Eggs, Jewish Forward, People's World, Socialist Call (R. 1260–1261).

newsboys' activities (*Herald,* R. 754, 780, 786–787, 806, 843–845, 889, 908, 923, 941–942; *Examiner,* R. 1622–1624; *Times,* R. 1271–1272; *News,* R. 1112). There was also an arrangement created by the Herald and News for the handling of both papers by a single set of newsboys (*supra,* p. 16) and, at some corners the Times and Examiner made joint distribution arrangements (R. 1239–1240, 1329–1330). The newsboys, in addition, in some instances (but see *Herald,* R. 827, 849–850, 890, 908, 1027; *News,* R. 1097, 1103–1104, 1111; *Times,* R. 1191, 1208, 1243–1244, 1251, 1325–1326, 1628; *Examiner,* R. 1326, 1449, 1455, 1473, 1592, 1611, 1622, 1628)[21] arrange among themselves for the afternoon newsboy to handle small quantities of left-over morning papers, and *vice versa* (*Herald,* R. 719, 734, 778, 780, 846–847, 886–887, 922, 932, 941, 982–983; *Times,* R. 1266, 1278; *Examiner,* R. 1426, 1617, 1622–1623), and occasionally for the handling of a few copies of competing papers for their mutual accommodation (*News,* R. 1103–1104, 1108, 1111–1112; *Times,* R. 1261–1262, 1271–1272, 1277; *Examiner,* R. 1417–1418, 1617–1618).

Except where the publishers themselves have combined their distribution arrangements, each of the newsboys is identified with only one of the

[21] The record shows not only that many of the newsboys sold one paper exclusively but that in some instances they were expressly instructed not to handle others (*Herald,* R. 753–754, 773–774, 819; *Times,* R. 1243–1244, 1251; *Examiner,* R. 1455).

companies involved herein (see *supra*, pp. 14–20, 24 and cf. R. 504–521, 616–629, 1091–1093). A newsboy is an Examiner or a Times newsboy because the paper involved has assigned him an exclusive selling territory and furnished him a product to sell. While he may, to a small extent "handle" other publications in order to supplement his income, he "hustles" only one paper and is officially accountable only to one publisher (*Herald*, R. 778, 780, 806, 820, 845, 853, 888–889, 908, 923; *Times*, R. 1243–1244, 1251, 1277, 1279; *Examiner*, R. 1431, 1448–1449, 1618; *News*, R. 778, 780, 806, 845, 853, 888–889, 893, 908, 923, 1108).[22]

The checkman and newsboys regard themselves as employees (R. 820, 825, 853, 871, 893–894, 898, 1464), are so regarded by representatives of respondents (R. 585, 696, 717, 802, 820, 1116, 900, 1122, 1332, 1484), and by the public (R. 483, 746–747, 969–972, 1040, 1122–1123). They formed the Union (R. 867, 872), which sought to negotiate with respondents in their behalf (R. 668–673), and adjusted grievances through collective action (R. 554, 659–677, 873–874, 984–985, 1085–1086, 1162–1163).

[22] Illustrative is the testimony of Herald Newsboy Steuart with respect to the copies of the Times and the Examiner left with him by the morning newsboy (R. 778): "He leaves them in the rack on display. I don't carry the Examiner and Times. I just leave them here. Any that are sold, I just take the money and check in to him in the evening."

Upon petitions filed in the court below by each of the respondents (R. 1699, 1738, 1764, 1806), the court, one judge dissenting (R. 1851), set aside the orders of the Board upon the ground that respondents' newsboys are not employees (R. 1843–1851). The court held (1) that the Board's ultimate finding that the newsboys here involved are employees was one of law upon which the court was entitled to exercise a judgment entirely independent of that of the Board, (2) that the word "employee", as used in the Act, must be given its usual common law significance, and (3) that, under the common law tests, the newsboys are not employees but independent contractors. The dissent asserted that the Board's inference of an employment relationship was a reasonable one and hence should have been left undisturbed (R. 1852).[23]

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the Board's denial of respondents' claim of exemption from the statute was improper.

2. In holding that the newsboys are "independent contractors."

3. In holding that the issue presents a question of law for the court to decide for itself and in

[23] The court rejected a contention by respondents that the activities of the newsboys here involved do not affect interstate commerce (R. 1845) and failed to pass upon respondents' claim that the unit found by the Board was inappropriate for collective bargaining purposes.

failing to give any weight to the Board's determination that newsboys are employees within the meaning of the Act.

4. In holding that the Board is required to follow the common law definition of employment without regard to the policies or context of the Act.

5. In failing to hold that the relationship involved herein is a personal service relationship which, even under common law standards, clothes the newsboys with employee status.

6. In setting aside and denying enforcement to the Board's orders.

SUMMARY OF ARGUMENT

I

The common law of master and servant does not define the employment relationship under the Act. This Court has recognized that the term "employee" is not a word of art but varies in meaning from statute to statute depending upon the context in which it is used. Not only the purpose and policy of the Act but also its plain language make it clear that Congress intended the scope of the Act's application to be governed by factors in addition to those relevant at common law.

The purpose of removing obstructions to commerce which arise from industrial strife and the policy of accomplishing this by encouraging collective bargaining show that Congress was concerned with problems of modern labor relations

foreign to the common law of master and servant developed in days of a handicraft economy and concerned with tort liability. The language of the Act, moreover, precludes a construction that Congress intended exclusive resort to the common law for a determination of coverage.

In any event, the application of the Act does not turn upon the interpretation of the common law of master and servant obtaining in the particular state in which the threat to commerce arises.

II

The Board's determination of the existence of an employment relationship, if it is not arbitrary and is supported by the evidence, is conclusive.

This Court, in recent cases, has held that where Congress has authorized an administrative body to determine a matter, even though it involves a question of the applicability of a statute, a reasonable exercise of the administrative judgment is binding upon the courts. The application of the term employee as used in the Act comes within this principle. There can be no official Board action, either in an unfair labor practice case arising under Section 10 or in a representation case arising under Section 9, unless the employment relationship is present. The determination of the existence of the employment relationship is therefore one which has been placed by Congress within the

jurisdiction of the Board. The determination involves the exercise of the Board's expert judgment. It must determine in each case whether the individual whose status is in question bears such a relationship to a given industry as to be appropriately a party to collective bargaining. To reach this determination the Board must consider whether the individual is engaged in a service relationship, whether the problems engendered by this service relationship may properly be the subject of collective bargaining, and whether there are other workers similarly situated so that bargaining on a collective basis is possible and not merely apply common law tests created for purposes of tort liability.

III

The Board's determination that the newsboys here involved are employees within the meaning of the Act is supported by substantial evidence. The newsboys are engaged in the performance of a service for respondents. They are hired and fired at respondents' will. Their hours, place of work, and rate of compensation are fixed by respondents. They constitute a labor force performing the same tasks for the same respondents daily over the years. Since the newsboys have neither special skill nor capital, their relationship generates problems of wages, hours, and working conditions as to which their bargaining position

is grossly disproportionate to that of the publishers. They formed a union which met with the publishers to adjust grievances and sought to bargain collectively. In the elections conducted by the Board a majority of the newsboys of each publisher voted to have the union act as their collective bargaining representative.

IV

The newsboys here involved are employees even under the usually accepted common-law tests. The publishers not only retained the right to direct the manner in which the newsboys performed their work and the result to be accomplished, but did in fact, as the Board found, exercise that right extensively. The newsboys are not engaged in a distinct occupation or calling. The publishers assign the newsboys the places at which they work and provide all the equipment needed. The newsboys may be discharged at will. The foregoing attributes have been held sufficient at common law to establish an employment relationship. The common-law cases likewise recognize that recompense by the difference between a purchase and a sale price, the hiring of assistants, or the purchase of a location is consistent with an employee status.

ARGUMENT

I

The Common Law of Master and Servant Does Not Define the Employment Relationship Under the Act

It is fundamental that statutes are to be construed in the light of the purposes sought to be achieved and of the evils sought to be remedied. The courts have made this sharply apparent in areas where the application of federal policy depends upon the establishment of an employment status or occupational classification. *United States* v. *American Trucking Ass'ns,* 310 U. S. 534; *South Chicago Coal & Dock Co.* v. *Bassett,* 309 U. S. 251; *International Stevedoring Co.* v. *Haverty,* 272 U. S. 50; *Warner* v. *Goltra,* 293 U. S. 155; cf. *Lehigh Valley Coal Co.* v. *Yensavage,* 218 Fed. 547 (C. C. A. 2), certiorari denied, 235 U. S. 705; *Fleming* v. *Hawkeye Pearl Button Co.,* 113 F. (2d) 52 (C. C. A. 8); *Fleming* v. *Palmer,* 123 F. (2d) 749, 762 (C. C. A. 1) certiorari denied, 316 U. S. 662; *General Wayne Inn* v. *Rothensies,* 47 F. Supp. 391 (E. D. Pa.); *Stone* v. *United States* (E. D. Pa.), decided September 16, 1943, C. C. H. Unemployment Insurance Service, Fed., Par. 9077.

In the *Trucking Associations* case this Court confined the term "employee" in Section 204 (a) of the Motor Carrier Act of 1935, which authorizes

the Interstate Commerce Commission to regulate the hours of service of motor carrier employees, to those employees whose duties affect safety of operation. In thus subordinating the literal meaning of the term "employee" to the purpose of the statute, the Court held that the term "is not a word of art" having a definite meaning but "takes color from its surroundings" (310 U. S. at 545), and that because Congress has varied the meaning of the term "employee" not only from statute to statute but even within a single statute, it must be construed in accordance with the legislative intent underlying the statute in which it appears.[24] In the *Lehigh Valley* case, *supra,* similarly Judge Learned Hand said (at pp. 552–553): "The word 'employed,' * * * must be understood with reference to the purpose of the act, and where all the conditions of the relation require protection, protection ought to be given. * * * Such statutes * * * should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them."[25]

The court below ignored the distinctive purpose and policy of the National Labor Relations Act and equated the definition of employment in Section 2 (3) of the Act with the common law of

[24] The use of "employee" in different federal statutes is reviewed in note 29, p. 545 of the *Trucking Associations* case.

[25] Compare Restatement of the Law of Agency, Section 220, Comment on Subsection (1) (d).

master and servant. We believe that not only the purpose and policy of the Act but also its plain language furnish the basis for a distinctive and broad definition of employment and that neither the common law nor definitions contained in other statutes limit the reach of the Act.

The purpose is the removal of the obstructions to commerce which arise through the denial by employers of the right of workers to organize and bargain collectively. It is the Act's policy to redress the inherent inequality of bargaining power between employees and employers by encouraging collective bargaining. (Section 1 of the Act.) Therefore, it is clear that, to the extent workers who are not expressly excluded from the Act's coverage are able to achieve equality of bargaining power concerning the terms and conditions of their employment, the purposes of the Act are vindicated; the broad test of coverage under it is, then, the collective bargaining concept. To avoid industrial strife collective bargaining is to be promoted among those who need it. Only a broad interpretation of the term "employee" is in keeping with this objective.[26] Moreover, in Section 1 of the Act, Congress expressly stated that the public policy was to be promoted by protecting not "servants," nor even

[26] Compare *National Labor Relations Board* v. *Carlisle Lumber Co.*, 99 F. (2d) 533, 537 (C. C. A. 9), certiorari denied, 306 U. S. 646.

"employees" in their rights to self-organization, but "workers." [27]

Thus, the purpose of the Act reflects the Congressional intent to deal with the realities of the modern employment relationship. Such a purpose is inconsistent with rigid acceptance of the common law test. A threshold obstacle to the acceptance of such a standard is created by the fact that it attributes to Congress an intention to bottom a statute designed to further collective bargaining upon a heritage of a handicraft economy to which such bargaining was unknown.[28] It ignores the fact that the common law of master and servant is concerned with the vindication of private rights and that the Act protects public rights;[29] that it is directed, not to the risk of injury by a servant to a third party (*e. g.*, Re-

[27] "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by *workers* of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." Section 1. [Italics supplied.]

[28] See Commons, John R. and Associates, *History of Labour in the United States*, Vol. I (1936), p. 604.

[29] See, e. g., *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 80; *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261; *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 369; *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 193, 194.

statement of the Law of Agency, Ch. 7), but to the risk of industrial disputes in interstate commerce.[30] In contrast to the preoccupation of the common law with whether the power to control the physical conduct of another justifies the finding of the master-servant relationship, the dominant theme of the Act, collective bargaining, requires a definition of employment which looks to control over the economic aspects of the relationship, such as wages and hours, regardless of whether there exists in the employer a right to intervene in the way in which the work is being done.[31] The common law master and servant re-

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[30] "We are dealing here not with private rights * * * nor with technical concepts pertinent to an employer's legal responsibility to third persons for acts of his servants * * *" (*Machinists* case, 311 U. S. at 80); "the problem is not to be approached from the standpoint of vicarious liability," *National Labor Relations Board* v. *Condenser Corp.*, 128 F. (2d) 67, 72 (C. C. A. 3), quoting from *Consolidated Edison Co.* v. *National Labor Relations Board*, 95 F. (2d) 390, 394 (C. C. A. 2), aff'd on this point, 305 U. S. 197. "The main if not the only purpose of the act, is to prevent obstructions to interstate and foreign commerce. * * * Congress was dealing with causes of obstructions affecting commerce, and not with the relationship of master and servant as such." *National Labor Relations Board* v. *Carlisle Lumber Co.*, 99 F. (2d) 533, 536–537 (C. C. A. 9), certiorari denied, 306 U. S. 646.

[31] The entire Act and its interpretation by the Board is an attempt to establish legal principles which give proper weight to the extensive *economic* control to which modern workers are subject. It is not primarily the worker's subjection to control of his "physical conduct in the performance of the service" (Restatement of the Law of Agency, Sec. 220 (1)) but rather to control of "his daily wage for

lationship is a periodic concept which depends for its existence upon the presence at a given moment in time of conditions requisite to legal liability. On the other hand, the realities of collective bargaining command a broader regard for

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the maintenance of himself and family" (*National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33; *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209) which creates the need for collective bargaining. Nor do workers ordinarily strike because they cannot have their way with respect to how their work should be done. It is the employer's control over wages, hours, and all working conditions—not merely the physical method by which the work is done—to which collective bargaining is addressed. It is control of this kind which results in the identification by the Board of affiliate and parent corporations and other entities not immediately in the employment relationship as employers for bargaining purposes and it is this realistic type of control which leads to the establishment by the Board of multiple-employer bargaining units (*infra*, p. 60). Similarly the entire concept of employer coercion and interference draws vitality from the economic, and not the physical, control of the employer and has resulted in the application of the sanctions of the Act to, and because of the conduct of, those who use such control to influence employee self-organization regardless of whether they may physically control the conduct of those whom they seek to influence. *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 77, 81; *National Labor Relations Board* v. *Taylor-Colquitt Co.*, decided November 8, 1943 (C. C. A. 4), 13 L. R. R. 394; *National Labor Relations Board* v. *Brown Paper Mill Co.*, 108 F. (2d) 867, 871 (C. C. A. 5), certiorari denied, 310 U. S. 651; *Atlas Underwear Co.* v. *National Labor Relations Board*, 116 F. (2d) 1020, 1022, 1023 (C. C. A. 6); *National Labor Relations Board* v. *Aluminum Products Co.*, 120 F. (2d) 567, 569–570 (C. C. A. 7); *National Labor Relations Board* v.

the worker's general status" and his continuing relationship to the subject matter of collective bargaining, whether or not he is "employed" (as that word might be defined under the narrowest common-law formulation) at a particular point

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M. A. Hanna Co., 125 F. (2d) 786, 788, 789 (C. C. A. 6); *National Labor Relations Board* v. *Thompson Products, Inc.*, 130 F. (2d) 363, 365, 367 (C. C. A. 6); *National Labor Relations Board* v. *Grower-Shipper Vegetable Ass'n*, 122 F. (2d) 368, 371 (C. C. A. 9); *National Labor Relations Board* v. *Arcade-Sunshine Co.*, 118 F. (2d) 49, 50–51 (App. D. C.), certiorari denied, 313 U. S. 567. In the debates on the bill which subsequently became the Act, both Senator Wagner, the sponsor of the bill, and Senator Walsh, chairman of the committee which reported the bill out, repeatedly emphasized that the Act was concerned with "the economic pressure of employers," not with their control over the workers' physical movements. 79 Cong. Rec. 7670–7671, 7678, 7658, 7653, 7655, 7654, 7661.

[32] Compare, Gall and Smethurst, *A Critical Analysis of the Federal-State System of State Unemployment Compensation Laws*, 3 Laws and Contemporary Problems, pp. 123, 127; "At common law the relationship of master and servant was marked out under the law of contract and tort. Well-established distinctions carried us into the law of principal and agent, or succeeded in creating a new relationship of independent contractor. Under modern statute law, the emphasis has shifted from contract to status, and delineation of the employer-employee relationship has been controlled by the impact of public policy represented in modern legislation. For example, the relationship under workmen's compensation laws and employer's liability acts is defined to relate the employer's liability to the degree of control exercised over the employee or his place of employment. Under more recent legislation pertaining to labor disputes, the relationship of employer and employee is differently defined [citing the National Labor Relations Act] to effectuate an entirely different public policy."

in time. *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206; *Marlin-Rockwell Corp.* v. *National Labor Relations Board*, 116 F. (2d) 586 (C. C. A. 2), certiorari denied, 313 U. S. 594.[28]

The language of the Act not only embraces all those to whom collective bargaining may appropriately be applied but fixes a standard of coverage which differs from the scope of the common law master and servant relationship. Section 2 (3) of the Act reflects the Congressional intent to define "employee" in a broad, non-technical sense and to promote the collective bargaining relationship. This section states:

> The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

The intent to expand the employee relationship is apparent from this definition. A purpose to

[28] See also the Board decisions cited in notes 64–78, pp. 61–63, *infra*.

shape this broad view of employment to the contours of the collective bargaining relation is reflected in the phrase "and shall not be limited to the employees of a particular employer" [34] as well as in the preservation of the employee status of strikers and those deprived of work in consequence of an unfair labor practice. The portions of the definition just given indicate the distance of the Act from the common law of master and servant, for persons discharged as a result of an unfair labor practice and those not employees of a particular employer are plainly not common-law servants.[35] The scope and nature of the Act's employment concept are apparent not only from its

[34] The expression "shall not be limited to the employees of a particular employer" is, as the Court has pointed out (*Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 191–192), "not fortuitous phrasing. It had reference to the controversies engendered by constructions placed upon the Clayton Act and kindred state legislation in relation to the functions of workers' organizations and the desire not to repeat those controversies. * * * The broad definition of 'employee,' 'unless the Act explicitly states otherwise,' as well as the definition of 'labor dispute' in § 2 (9), expressed the conviction of Congress 'that disputes may arise regardless of whether the disputants stand in the proximate relation of employer and employee, and that self-organization of employees may extend beyond a single plant or employer.' H. R. Rep. No. 1147, 74th Cong., 1st Sess., p. 9; see also S. Rep. No. 573, 74th Cong., 1st Sess., pp. 6, 7."

[35] Similarly the Act has been held to protect those discriminated against in the hiring process but who had never become employees in the usual sense of the term. *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177.

general inclusions but from its exclusions as well. The Act exempts domestic servants and agricultural laborers—the classic types of common-law servants."[36]

The term "employee" is used in the Act interchangeably with still broader terms. In the statement of policy "workers" were named as the ones to be protected. In Section 2 (9) "labor dispute" includes a controversy concerning the representation, not of employees, but of "persons."[37] In Section 2 (3) "employee" includes

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[36] In *North Whittier Heights Citrus Ass'n* v. *National Labor Relations Board*, 109 F. (2d) 78, 80 (C. C. A. 9), certiorari denied, 310 U. S. 632, 311 U. S. 724, the court thus presented the reason for these exemptions: "The purpose of the Act is clear and we find the Act specifically excepting three kinds of employees from its provisions. It would seem profitable to consider whether or not there is a 'common denominator' in these three exceptions. We think there is. Why is 'any individual employed by his parent or spouse' exempted? Because (not excluding other reasons) in this classification there never would be a great number suffering under the difficulty of negotiating with the actual employer and there would be no need for collective bargaining and conditions leading to strikes would not obtain. The same holds good as to 'domestic service,' and the same holds good as to 'agricultural labor' if the term be not enlarged beyond the usual idea that the term suggests."

[37] "The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of *persons* in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee." Section 2 (9). [Italics supplied.]

"individuals" whose work has ceased because of a current labor dispute.

This Court has already had occasion to apply Section 13 (c) of the Norris-LaGuardia Act, 47 Stat. 73 (29 U. S. C., § 113 (c)), which defines "labor dispute" in terms identical with those in the National Labor Relations Act.[38] In *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91, this Court reversed a decision of the Seventh Circuit Court of Appeals which held that no labor dispute existed within the meaning of the Norris-LaGuardia Act. The Seventh Circuit had rested its decision on the ground that the vendors of milk there involved "are independent contractors. * * * They buy and sell for their own profit and are not salaried workers" (108 F. (2d) 436, 442). This Court said (311 U. S., at 98–99):

> * * * plaintiffs' evidence showed that the "vendors" were actually regarded as employees of the plaintiff dairies. * * *
> * * * To say, as the Circuit Court of Appeals did, that the conflict here is not a good faith labor issue, and that therefore there is no "labor dispute," is to ignore the statutory definition of the term; * * *

On any view, it would seem clear that the application of the Act cannot be made to turn on the in-

[38] The Senate Report on the Act points out that the definition of "labor dispute" is copied from the Norris-LaGuardia Act (S. Rep. No. 573, 74th Cong., 1st Sess., p. 7.)

terpretation of the common law obtaining within the particular state where the threat to commerce arose. The Act could scarcely serve the purpose which Congress intended of removing obstructions to interstate commerce if its operation depended upon the diverse and inconsistent local definitions and refinements of the employment relationship.[39] Uniformity is a manifest essential to the effective

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[39] As to newsboys, compare the cases cited by the court below (R. 1849) with *Salt Lake Tribune Publishing Co.* v. *Industrial Commission*, 99 Utah 259, 102 P. (2d) 307; *Pacific Employers Insurance Co.* v. *Industrial Accident Commission*, 3 Cal. (2d) 759, 47 P. (2d) 270, reversing 38 P. (2d) 809; *In re Scatola*, 282 N. Y. 689, 26 N. E. (2d) 815; *Wilson* v. *Times Printing Co.*, 158 Wash. 95, 290 Pac. 691; *Hampton* v. *Macon News Printing Co.*, 64 Ga. App. 150, 12 S. E. (2d) 425. Compare, also, in the general field of direct sales: *Matter of Electrolux Corp.*, 288 N. Y. 440, 43 N. E. (2d) 480 with *Electrolux Corp.* v. *Danaher*, 128 Conn. 342, 23 A. (2d) 135 (sellers of vacuum cleaners); *Schomp* v. *Fuller Brush Co.*, 124 N. J. L. 487, 12 A. (2d) 702, aff'd 126 N. J. L. 368, 19 A. (2d) 780, with *Fuller Brush Co.* v. *Industrial Commission*, 104 P. (2d) 201 (Utah, 1940) (sellers of brushes); *Creameries of America* v. *Industrial Commission*, 98 Utah 571, 102 Pac. (2d) 300, with *Mountain Meadow Creameries* v. *Industrial Accident Commission*, 25 Cal. App. (2d) 123, 76 P. (2d) 724 (sellers of dairy products); *In re Foy*, 116 P. (2d) 545 (Wash.), with *In re Levine*, 283 N. Y. 577, 27 N. E. (2d) 439 (distributors of cooking utensils); *Globe, Grain and Milling Co.* v. *Industrial Commission*, 98 Utah 36, 91 P. (2d) 512, modified on rehearing, 98 Utah 48, 97 P. (2d) 582, with *Moorman Mfg. Co.* v. *Unemployment Compensation Commission*, 296 N. W. 791 (Iowa 1941) (sellers of feed); *In re Fidel Ass'n*, 287 N. Y. 626, 39 N. E. (2d) 265 (N. Y. Ct. of App. 1941), with *Robert C. Buell & Co.* v. *Danaher*, 127 Conn. 606, 18 A. (2d) 697 (sellers of securities). See also Wolfe, *Determination of Employer-Employee Rela-*

operation of the Act and was plainly intended by Congress. Indeed, the rule is well settled, and has been recently restated by this Court, that in a federal statute of general uniform application (see Section 10 (a) of the Act) local law must be rejected in favor of the definitions and concepts expressed or implied in the statute itself. *Jerome* v. *United States,* 318 U. S. 101, 104; *Estate of Rogers* v. *Helvering,* No. 66, this Term.[40]

In *National Labor Relations Board* v. *Blount,* 131 F. (2d) 585 (C. C. A. 8), certiorari denied 318 U. S. 791, it was contended both that Section 2 (3) of the Act was to be read in the light of the common law, and that certain Missouri statutes governed the nature of the relationship in issue which the Board had found to be one of employer and employee. Although the miners involved in that case were entirely free from control in the common-law sense, the court

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tionships in Social Legislation, 41 Col. Law Rev. 1015, 1033–1034; *Issues Involved in Determining Eligibility Under the Old Age and Survivors Insurance Program*, Social Security Yearbook, 1941, pp. 47–51; *Some Aspects of Coverage Under Insurance Provisions of the Social Security Program*, Social Security Yearbook, 1940, pp. 74–75.

[40] Accord: *Morgan* v. *Commissioner of Internal Revenue*, 309 U. S. 78; *Lyeth* v. *Hoey*, 305 U. S. 188; *Chicago Board of Trade* v. *Johnson*, 264 U. S. 1; *Calhoun Gold Mining Co.* v. *Ajax Gold Mining Co.*, 182 U. S. 499. See also the concurring opinion in *D'Oench Duhme & Co.* v. *Federal Deposit Insurance Corp.*, 315 U. S. 447, 471–472.

upheld the Board's finding that they were employees within the meaning of the Act's distinctive standards. The court stated (131 F. (2d) at 590):

> The respondents contend in effect that the term "employee" used in the Act should be deemed a word of art taken from the common law and should be given the same meaning as servant in the common law decisions relating to master and servant. Many tort and compensation cases are cited, Missouri having contributed its full share to their great volume. It is contended for the Board that its jurisdiction must be measured by the policy and provisions of the Labor Relations Act and already the list of the Board's decisions in the matter fills two closely printed pages.
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> In the abstract there can be no doubt that the federal Act establishes a general and uniform jurisdiction over labor relations in the Board which may not be varied or denied by state statutes or decisions, but the question whether persons are or are not employees must always depend upon the particular facts as they are related to the inquiry in which the question is raised. * * * if the action had been at common law for damages resulting from failure of a master to perform some duty owed to a servant, doubtless other considerations would have been deemed relevant.

Although the *Blount* case, which was cited to the court below, is the only case in the federal courts

which deals directly with and construes the term "employee" in the Act, it was ignored by the court. Instead the court relied heavily upon "the leading case in California," *New York Indemnity Co.* v. *Industrial Accident Commission,* 213 Cal. 43, 1 P. (2d) 12. The court's reliance upon this case illustrates both the uncertainty which will result if federal labor law is made to depend on what the various states hold from time to time and the inconclusiveness of the factors deemed controlling under the common law and other statutes to the issues arising under the National Labor Relations Act. Thus, in the *New York Indemnity* case the California Supreme Court on rehearing, reversing an earlier decision (294 Pac. 707), set aside a workman's compensation award involving a newsboy of the type here in issue on the ground that newsboys were "irresponsible persons" for whose accidents the publisher could not reasonably be held accountable. The record here strongly refutes any suggestion that control over individuals of the type reached by the Board's decision is impossible or even difficult. Moreover, whether or not an employer is in a position to impose such safety controls upon his personnel as to avoid liability under workmen's compensation laws is irrelevant to the issue whether they should be permitted to bargain. Similarly, whatever relevance is present for other purposes in the assertion by the California court, if true, that newsboys are subject

to "physical infirmities" and are "failures in other vocations," this surely is not inconsistent with the bargaining relationship and does not prove that the newsboys are independent merchants (see, *infra*, p. 48). If anything, it emphasizes a need for bargaining.

We believe that the foregoing demonstrates that the common law master-and-servant relationship was improperly adopted by the court below as the test of the employment status under the Act, and that the Act itself furnishes a guide for the ascertainment of the nature of that relationship.

II

The Board's Determination of the Existence of an Employment Relationship, if Supported by the Evidence, is Conclusive

The court below made its own independent determination as to whether newsboys are "employees" within the meaning of the National Labor Relations Act. The opinion makes it clear that no weight whatever was given the Board's administrative judgment that newsboys are "employees." Instead the court proceeded upon the assumption that whether or not the newsboys are "employees" was wholly a matter of law, for the *de novo* decision of the court (R. 1849–1850).[41]

[41] Judge Denman dissented from the opinion of the majority on the sole ground that the court had improperly substituted its own inferences for the Board's (R. 1851, 1852).

And the law applied by the court was the common law of master and servant, with particular reference to the law of California (R. 1848–1851).

Having shown that the Act does not adopt a common law test of master and servant (Point I, *supra*), we urge, first, that the question of coverage was for the determination of the Board (Point II), and that the court below should have upheld the Board's determination since it was not arbitrary and was supported by substantial evidence (Point III, *infra*). In the second place, even if the issue be viewed as one for the courts independently of the Board, we urge that the court below erred as a matter of law in ruling that the newsboys are not "employees" within the meaning of the Act (Point III and IV, *infra*). Even on this view of the role of the courts, the judgment of the Board is entitled to weight.[42]

The court below justified the substitution of its judgment for that of the Board with respect to the ultimate finding of an employment rela-

[42] Contrary to the view of the court below (R. 1848), *United States* v. *American Trucking Ass'ns*, 310 U. S. 534, does not hold that the administrative interpretation of a statute is without weight. The Court there was concerned with the ascertainment of legislative intent with respect to a broad subject matter which was not within the expert competence of a single administrative agency but, rather, covered an area occupied by two administrative agencies. Definition of the boundary between the two agencies clearly involved, as the Court noted, a judicial function. Even with respect to such an issue, which is plainly outside of the

tionship upon the ground that the interpretation of the statute was involved. But the case does not present an unmixed question of law any more than did *Gray* v. *Powell*, 314 U. S. 402; *Shields* v. *Utah Idaho Central R. Co.*, 305 U. S. 177; *South Chicago Coal & Dock Co.* v. *Bassett*, 309 U. S. 251, or *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125. See also *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 400.

The issue in *Gray* v. *Powell* was whether on undisputed facts a railway company was a "producer" of coal within the meaning of the Bituminuous Coal Act; in the *Shields* case, whether a railroad was an "interurban" within the meaning of the Railway Labor Act; in the *South Chicago* case whether an employee was a "member of a crew" within the meaning of the Longshoremen and Harbor Workers Compensation Act; and in the *Rochester Telephone* case whether one company was under the "control" of another within the meaning of the Communications Act. In each of the cases cited, this Court recognized that the question as to whether particular facts brought a person within statutory language was a matter of judgment on which the decision of the administrative official was to

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principle contended for, the Court noted that the statutory interpretations of the administrative bodies involved "are entitled to great weight" (310 U. S. at 549). As to the weight to be accorded administrative interpretation of a statute, see also *Overnight Motor Transportation Co.* v. *Missel*, 316 U. S. 572, 580.

be accepted, if supported by evidence in the record, and that such questions of administrative judgment were not to be treated as pure matters of law for purposes of judicial review.

Very recently, in *Dobson* v. *Commissioner,* No. 44, this Term, decided December 20, 1943, this Court epitomized the doctrine of these cases as a recognition that questions of the type under consideration presented "mixed questions of law and fact," and that "when the court cannot separate the elements of a decision so as to identify a clear-cut mistake of law, the decision" of the administrative body must stand. The court also stated that "In deciding law questions courts may properly attach weight to the decision of points of law by an administrative body having special competence to deal with the subject matter."

This does not mean that the conclusions of an administrative body are final either on a "fact" or a "law" question. The determination of the administrative body must have "warrant in the record" (*Rochester Telephone Corp.* v. *United States,* 307 U. S. 125, 146) and a reasonable basis in the law. Just as an administrative decision which is unsupported by substantial evidence has no rational basis in fact, so, too, an administrative ruling which is plainly unreasonable in the light of express statutory language or other convincing evidence of legislative intention has no

foundation in law.[43] For either vice administrative action may be set aside. But "the judicial function is exhausted when there is found to be a rational basis for the conclusions approved by the administrative body." *Rochester Telephone Corp.* v. *United States,* 307 U. S. 125, 146.

We believe that the scope of review which the Court held applicable in *Gray* v. *Powell* to the administrative determination that the railway was a "producer" under the Bituminous Coal Act of 1937 is a proper one here. With respect to that determination the Court said that "the function of review placed upon the courts * * * is fully performed when they determine that there has been a fair hearing, with notice and an opportunity to present the circumstances and arguments to the decisive body, and an application of the statute in a just and reasoned manner" (314 U. S. at 411). If there has been a "sensible exercise of judgment," the administrative decision must be left undisturbed. (*Id.,* at 413.)

Whether a person is an "employee" presents the same type of issue. That the action of the court below in treating the issue as one of law

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[43] Thus, if the language of the statute or its legislative history manifests a specific legislative intention as applied to a particular state of facts, it would be arbitrary for an administrative body to give the statute a different meaning. But if legislative intention appears only in broad outline, without reference to a specific state of facts, there would be legitimate room for administrative discretion in determining whether the Act applied in a particular situation.

without regard to the findings of the Board is in conflict with the principles underlying *Gray* v. *Powell*, is strongly indicated by the decision of the Circuit Court of Appeals for the Second Circuit in *Walker* v. *Altmeyer*, 137 F. (2d) 531. In that case the question was whether Walker was "an employee" within the meaning of Section 209 (b) of the Social Security Act, as amended August 10, 1939 (53 Stat. 1373, 42 U. S. C. sec. 409 (b))." The Social Security Board held that he was, but its decision was set aside by the district court, which drew its own inference from the facts instead of accepting that of the Board. The Circuit Court of Appeals for the Second Circuit reversed, stating (137 F. (2d) at 533–534):

> It was the judgment of the administrative body as to an employer-employee relation-

" Walker had been paid old-age benefits for a period during which he had failed to report that he had received over $15.00 per month from other sources. Under Section 203 (d) (1) (42 U. S. C., sec. 403 (d) (1)) the Social Security Board is required to deduct from future benefits any amounts paid during months in which an individual "rendered services for *wages* of not less than fifteen dollars." Section 209 (a) (42 U. S. C., sec. 409 (a)) defines "wages" as meaning "all remuneration for *employment*," and Section 209 (b) defines "employment" as meaning "any service performed * * * by an employee for the person employing him." Thus if an individual does not receive compensation as an employee, the deduction cannot properly be made. The Social Security Board held that Walker, a lawyer, had been an employee during a period in which he had received over $15.00 per month, and that a deduction should accordingly be made from future benefit payments due him. Walker attacked this decision on the ground that he was not an employee but an independent contractor.

> ship rather than that of the court which the statute made effective provided that judgment was based upon conclusions reasonably reached upon due consideration of all relevant issues presented after parties in interest had been given a fair hearing or a fair opportunity to be heard upon the facts and the applicable law. *Gray* v. *Powell*, 314 U. S. 402.

Both the *Walker* case and the case at bar involved statutory provisions applicable only to "employees"; the board involved in each case was authorized generally to determine whether particular conduct came within the statute, although neither statute contained a specific clause authorizing the administrative agency to pass upon the existence of the employment relationship.[45] Each statute provided that the administrative findings of fact, if supported by substantial evidence, should be conclusive.[46]

A Board finding as to the existence of an employment relationship is entitled to as much weight as its finding as to other essential ingredients of an unfair labor practice. Courts reviewing decisions of the Board involving interpretations of other terms in the statute have never assumed that they could independently judge whether the application made by the Board

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[45] National Labor Relations Act, sec. 10; Social Security Act, sec. 205 (42 U. S. C., sec. 405 (b)).

[46] National Labor Relations Act, sec. 10 (e); Social Security Act, sec. 205 (g) (42 U. S. C., sec. 405 (g)).

was proper. Thus, courts have enforced Board orders resting upon the Board's interpretations of the meaning of the term "labor organization" in Section 2 (5)[47] or "labor dispute" in Section 2 (9)[48] or "concerted activities" in Section 7[49] without exposing them to a special type of judicial scrutiny. Yet these questions are no more "legal" in quality than the finding of employment.[50] Likewise, Board determinations that an individual is an employer either because of his factual relationship to the subject matter of collective bargaining,[51] or because of his control over

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[47] *National Labor Relations Board* v. *J. Freezer & Son*, 95 F. (2d) 840 (C. C. A. 4); *National Labor Relations Board* v. *Nelson Mfg. Co.*, 120 F. (2d) 444, 445 (C. C. A. 8); *National Labor Relations Board* v. *Botany Worsted Mills*, 106 F. (2d) 263, 267 (C. C. A. 3).

[48] *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, 344; *New York Handkerchief Mfg. Co.* v. *National Labor Relations Board*, 114 F. (2d) 144, 148 (C. C. A. 7), certiorari denied, 311 U. S. 704; *National Labor Relations Board* v. *Good Coal Co.*, 110 F. (2d) 501, 503 (C. C. A. 6), certiorari denied, 310 U. S. 630.

[49] *National Labor Relations Board* v. *Peter Cailler Kohler Swiss Chocolates Co.*, 130 F. (2d) 503, 506 (C. C. A. 2); *National Labor Relations Board* v. *J. G. Boswell Co.*, 136 F. (2d) 585 (C. C. A. 9); *Bethlehem Shipbuilding Corp.* v. *National Labor Relations Board*, 114 F. (2d) 930, 937 (C. C. A. 1).

[50] Cf. *South* v. *Railroad Retirement Board*, 131 F. (2d) 748 (C. C. A. 5), certiorari denied, 317 U. S. 701; *Holloway* v. *Railroad Retirement Board*, 44 F. Supp. 59 (N. D. Ga.).

[51] E. g., *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 263; *National Labor Relations Board* v. *Aluminum Products Co.*, 120 F. (2d) 567, 569 (C. C. A. 7); *National Labor Relations Board* v. *Lund*, 103 F. (2d) 815 (C. C. A. 8).

labor relations[52] or because he has acted in the interest of an employer[53] within the meaning of Section 2 (2), have been uniformly upheld without any suggestion that the Board's findings may be disregarded by the courts. Indeed, the Circuit Court of Appeals for the Third Circuit[54] has expressly held that a finding that one is an employer, "is a finding which, like other findings of fact, is for the Board to make and for us merely to review from the standpoint of supporting substantial evidence."[55]

Even to a greater extent than in the *Gray* case, "such a determination as is here involved belongs

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[52] *Butler Bros.* v. *National Labor Relations Board*, 134 F. (2d) 981 (C. C. A. 7), certiorari denied, No. 274, this Term; *National Labor Relations Board* v. *Condenser Corp.*, 128 F. (2d) 67, 71 (C. C. A. 3); *National Labor Relations Board* v. *Grower-Shipper Vegetable Ass'n*, 122 F. (2d) 368, 378 (C. C. A. 9); *National Labor Relations Board* v. *Gerity Whitaker Co.*, 137 F. (2d) 198 (C. C. A. 6), certiorari denied, 318 U. S. 763, 801, enforcing 33 N. L. R. B. 393; *National Labor Relations Board* v. *Long Lake Lumber Co.*, 138 F. (2d) 363 (C. C. A. 9).

[53] *National Labor Relations Board* v. *Taylor-Colquitt Co.*, decided November 8, 1943 (C. C. A. 4), 13 L. R. R. 394; *Butler Bros.* v. *National Labor Relations Board*, *supra*, note 52.

[54] *National Labor Relations Board* v. *Condenser Corp.*, 128 F. (2d) 67, 71–72 (C. C. A. 3).

[55] Compare *National Labor Relations Board* v. *Medo Photo Supply Corp.*, 135 F. (2d) 279, 281 (C. C. A. 2), pending on certiorari, No. 265, this Term, where the court adverted to "the doctrine, often stated by the Supreme Court in varying terms, that administrative agencies, because they have been designated by Congress as specialists in a particular field advised by experts, are, within a very wide area, in a better

to the usual administrative routine" (314 U. S. at 411). The employment relationship is the exclusive subject matter of the Act and of the Board's activities. There can be no official Board action, either in an unfair labor practice case under Section 10 or in a representation case under Section 9, unless the employment relationship is present. By failing to specify the precise limits of the broad employment concept contained in the Act (Section 2 (3), "The term employee shall include any employee * * *."), Congress entrusted to the expert judgment of the Board the appropriate application of this definition. It cannot be argued that Congress intended to confide to the specialized skill of the Board findings of fact typically arising from the employment relationship but at the same time to ignore its expert character in determining the existence of such relationship.

The collective bargaining purpose shapes the employment relationship under the Act. Three fundamental considerations determine the existence of such a relationship in a specific case. First, since we are dealing with workers, an inquiry must in every instance be made into whether the individual whose status we are seeking to determine is engaged in a service relationship.[38]

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position than a reviewing court to determine the appropriate applications of the statutes which they are directed to administer."

[38] See Wolfe, *Determination of Employer-Employee Relationships in Social Legislation*, 41 Col. Law. Rev. 1015, 1034.

The focal question is whether the individual involved supplies his labor or skill in the business of another. Second, the fact that are relationship contemplated by the Act is a collective bargaining relationship narrows the inquiry. The relationship must conform to the bargaining postulates and fit into the framework of the Act. Thus, because supervisors are identified with management, they are not accorded bargaining rights under Section 9 of the Act.[57] *Matter of Maryland Dry Dock Co.*, 49 N. L. R. B. 733. Since there can be no collective bargaining relationship unless a subject for bargaining exists, the relationship must envisage the day-to-day rendition of service in the normal course of a business, for it is this type of service which generates problems which are the normal subject of collective bargaining such as compensation, hours, and working conditions. Control, direct or indirect, exclusive or shared, over these terms of the relationship, identifies the employer for bargaining purposes.[58] Third, since

[57] They are, of course, common law employees and, indeed, employees for purposes of protecting their concerted activities against unfair labor practices. *National Labor Relations Board* v. *Christian Board of Publication*, 113 F. (2d) 678 (C. C. A. 8); *National Labor Relations Board* v. *Skinner & Kennedy Stationery Co.*, 113 F. (2d) 667 (C. C. A. 8). The dual nature of the supervisor under the Act as both employer and employee emphasizes the inconclusiveness of common law guides and the importance of giving full effect to the language and context of the Act in defining the relationship with which it deals.

[58] See cases cited, *supra* notes 51–53.

we are concerned with *collective* bargaining, more than one worker must be involved (*Matter of Luckenbach Steamship Co.*, 2 N. L. R. B. 181, 193),[59] and the objective conditions which characterize the work must normally give rise to the method of group, rather than individual, bargaining and, in normal times to the bargaining sanction of the strike.

These principles are exemplified in a long series of Board decisions.[60] The Board's determinations

[59] See *Matter of Schick Dry Shaver Co.*, 4 N. L. R. B. 246, 252; *Matter of Metro-Goldwyn-Mayer Studios*, 8 N. L. R. B. 858, 864; *Matter of Joseph C. Finch & Co.*, 10 N. L. R. B. 896, 899, 900; *Matter of Trawler Maris Stella, Inc.*, 12 N. L. R. B. 415, 426; *Matter of Paramount Pictures, Inc.*, 13 N. L. R. B. 846; *Matter of RKO Radio Pictures, Inc.*, 13 N. L. R. B. 876; *Matter of Western Union Telegraph Co.*, 35 N. L. R. B. 251; *Matter of Rosenhirsch Co.*, 38 N. L. R. B. 619.

[60] For example: *Matter of Metro-Goldwyn-Mayer Studios*, 7 N. L. R. B. 662, 686–690 (professional writers working exclusively for one company); *Matter of Seattle Post-Intelligencer*, 9 N. L. R. B. 1262, 1270–1275 (newspaper distributors exclusively for one company, who own their own truck and hire their own assistants); *Matter of KMOX Broadcasting Station*, 10 N. L. R. B. 479 (free-lance announcers and radio artists); *Matter of Connor Lumber and Land Co.*, 11 N. L. R. B. 776 (lumber workers under sole direction of contractor but work on company premises, work functionally coherent with company's business and subject to conditions established by company); *Matter of Interstate Granite Corp.*, 11 N. L. R. B. 1046 (colorable lease of a department of an enterprise); *Matter of Trawler Maris Stella, Inc.*, 12 N. L. R. B. 415 (fishermen paid in proportion to selling price of catch); *Matter of American Scale Co.*, 19 N. L. R. B. 124 (colorable lease); *Matter of Sun Life Insurance Co.*, 15 N. L. R. B. 817 (insurance canvassers); *Matter of Park*

with respect to the employment relationship bring within the area of the Act's coverage all workers or wage earners whose livelihood depends upon a continuing association with an enterprise. It is clear also that the operative consideration in every instance is the factual character of the relationship and not surface arrangements of lessor-lessee, vender-vendee, or independent contract through which the work is distributed or compensated for.

Floral Co., 19 N. L. R. B. 403 (colorable lease of greenhouses; work of growers a stage in and integral part of company's entire business; leases involved not so much the accomplishment of any specified result as a continuing operation in close association with whole of company's enterprise); *Matter of Edward F. Reichelt, et al.*, 21 N. L. R. B. 262 (colorable lease of fur business); *Matter of Kelly Co.*, 34 N. L. R. B. 325 (two truck owners working exclusively for company held employees, three working for others as well held independent contractors); *Matter of Post-Standard Co.*, 34 N. L. R. B. 226 (newspaper distributors, despite method of payment, functionally related to company's business); *Matter of Twentieth Century-Fox*, 32 N. L. R. B. 717 (artists working on premises exclusively for one company held employees; free-lance artists working for various companies held not employees); *Matter of James E. Stark Co.*, 33 N. L. R. B. 1076 (lumber crew working under contractor at hours and wages fixed by company); *Matter of Deep River Timber Co.*, 37 N. L. R. B. 210 (those working under contractors preparing roadways and hauling logs employees of company in view of interrelation of all operations at logging camp, assumption by company of responsibility for wage payments of both contractors, and past bargaining history); *Matter of John Yasek*, 37 N. L. R. B. 156 (truck owners hauling logs principally for one company); *Matter of Harry Murphy*, 37 N. L. R. B. 487 (owners of single trucks hauling logs, compensated at footage rate; no finding as to owners of more than one truck, since evidence unavailable as to whether

Similarly, coverage is uniformly denied where the individual involved is engaged in his own business, or, in a self-employed capacity holds himself out to the public or a limited portion of it.

The Board has thus summarized in the present case (R. 108, n. 33) its interpretations of the Act's employment definition:

> In cases where the status of an individual was challenged, we have indicated that the statutory definition of the term "employee" embraces all employees in the conventional as well as legal sense, except those by express provision excluded and that the primary consideration in the determination of the applicability of the statutory definition is whether effectuation of the declared policy and purposes of the Act comprehend securing to the individual the rights guaranteed and protection afforded by the Act.

The versatile administrative connotations of and refinements in the term "employee" which the Board has developed in connection with Section 9 emphasize the fact that this is a subject matter peculiarly appropriate to the exercise of administrative discretion. Thus the Board is called upon

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such owners are engaged in independently established businesses of trucking and transfer); *Matter of Phelps Dodge Corp.*, 34 N. L. R. B. 846 ("contractor" unloading ore on an equal share carload basis); *Matter of Veta Mines*, 36 N. L. R. B. 288, 292 (sections of mine unprofitable for normal company operation, worked by "leasers" who hired "partners"; both "leasers" and "partners" employees).

to decide whether those who work for a contractor are the "employees" of the primary employer and are to be grouped with "other" employees of the primary employer for bargaining purposes.[61] It is frequently required to decide whether shared control over labor relations or over the subject matter of collective bargaining requires that the bargaining relationship extend beyond the immediate employment relationship. The Board in many instances groups in an appropriate unit not only employees of companies interrelated through common ownership and management,[62] but also employees of competing companies,[63] and determines that a group of companies or even a group of associations constitutes one "employer" within the meaning of the Act. In shaping an appropriate bargaining unit the Board must determine whether a particular individual is an "employee" or a "supervisor" for purposes of determining whether he should be placed in a bar-

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[61] See *Matter of Union Lumber Co.*, 7 N. L. R. B. 1094; *Matter of Daniel Creek Logging Co.*, 13 N. L. R. B. 184; *Matter of Markham and Callow, Inc.*, 13 N. L. R. B. 963; *Matter of Gordon Hill*, 38 N. L. R. B. 1276.

[62] *E. g.*, National Labor Relations Board v. Lund, 103 F. (2d) 815 (C.C.A. 8), enforcing and remanding, 6 N. L. R. B. 432; Matter of United Press Associations, 3 N. L. R. B. 344, 347; Matter of Art Graven Co., Inc., 7 N. L. R. B. 102, 116.

[63] *E. g.*, *Matter of Shipowners Assn., of the Pacific Coast*, 7 N. L. R. B. 1002, 1014, 1915, 1021–1025, review denied, *sub nom. American Federation of Labor* v. *National Labor Relations Board*, 308 U. S. 401; *Matter of Stevens Coal Co.*, 19 N. L. R. B. 98; *Matter of Grower-Shipper Vegetable Ass'n of California*, 15 N. L. R. B. 322, enforced in 122 F. (2d) 368 (C. C. A. 9).

gaining unit and whether extra and irregular employees should be granted the same bargaining rights as full-time employees.[64]

The employment concept is treated with a similar flexibility and diversity in the Board's adjudications with respect to eligibility to vote in an election. In dealing with seasonal enterprises the Board frequently selects as the pay-roll date to be used in determining eligibility to vote in an election, one which will insure bargaining rights to those with a sufficiently close relationship to the entire employment situation to give them an interest in the collective bargaining problems of the appropriate unit and in the selection of a bargaining representative for it even though such individuals may not be currently "employed."[65] Similarly it must determine in which situations strikers who have ceased work, and individuals who replace them,[66] are entitled to vote. It often decides that laid-off employees have a sufficient expectancy of return to employment to entitle them to employee status,[67] and that em-

[64] See *Matter of B. Hoberman*, 30 N. L. R. B. 1241; *Matter of Phelps Dodge Corp.*, 34 N. L. R. B. 846.

[65] *E. g.*, *Matter of American Steamship Co.*, 27 N. L. R. B. 584; *Matter of Ohio Match Co.*, 28 N. L. R. B. 433; *Matter of Hueneme Wharf & Warehouse Co.*, 39 N. L. R. B. 636.

[66] *E. g.*, *Matter of Standard Lime & Stone Co.*, 17 N. L. R. B. 147, 153; *Matter of Rudolph Wurlitzer Co.*, 32 N. L. R. B. 163; *Matter of Thorrez & Maes Mfg. Co.*, 39 N. L. R. B. 693.

[67] *E. g.*, *Matter of Danahy Packing Co., Inc.*, 3 N. L. R. B. 354, 358; *Matter of Paraffine Companies, Inc.*, 25 N. L. R. B. 752; *Matter of Sullivan Machinery Co.*, 31 N. L. R. B. 749.

ployees claimed to be discriminatorily discharged may vote.[68] Decisions according bargaining rights to sick or injured employees,[69] those on leave,[70] and those inducted into the armed services,[71] further illustrate the distinctive nature of the Act's employment concept. Other groups of individuals whose claims to bargaining rights the Board must adjust in terms of the policies of the Act and to whom the Board under certain circumstances awards "employee" status are temporary employees,[72] relief employees,[73] part-time

[68] *E. g., Matter of Lenox Shoe Co., Inc.*, 4 N. L. R. B. 372, 389; *Matter of Federated Fishing Boats of New England & New York, Inc.*, 15 N. L. R. B. 1080, 1091; *Matter of Mine "B" Coal Co.*, 29 N. L. R. B. 405.

[69] *E. g., Matter of Great Lakes Engineering Works*, 3 N. L. R. B. 825, 832; *Matter of American Cyanamid & Chemical Corp.*, 11 N. L. R. B. 803; *Matter of Armour & Co.*, 36 N. L. R. B. 306; *Matter of Wilson & Co.*, 14 N. L. R. B. 283.

[70] *E. g., Matter of Pennsylvania Shipping Co.*, 10 N. L. R. B. 1380; *Matter of Farr Spinning & Operating Co., Inc.*, 29 N. L. R. B. 726.

[71] *E. g., Matter of Marcalus Mfg. Co. Inc.*, 33 N. L. R. B. 107; *Matter of Volney Felt Mills, Inc.*, 36 N. L. R. B. 839; *Matter of Wilson & Co.*, 37 N. L. R. B. 944; *Matter of Rudolph Wurlitzer Co.*, 41 N. L. R. B. 1074.

[72] Illustrative of the cases holding such employees eligible to vote are: *Matter of Reading Transportation Co.*, 10 N. L. R. B. 15, 22, 23; *Matter of Union Premier Food Stores, Inc.*, 11 N. L. R. B. 270, 280; *Matter of Schiff Co.*, 36 N. L. R. B. 575.

[73] Illustrative of the cases holding such employees eligible to vote are: *Matter of Continental Mills*, 30 N. L. R. B. 82; *Matter of Youngstown Steel Door Co.*, 31 N. L. R. B. 555; *Matter of International Harvester Co.*, 32 N. L. R. B. 16, 25, 33, 40.

employees,[74] intermittent and casual employers.[75] In addition, the Board must determine whether to grant eligibility to vote to probationary employees [76] and those transferred or assigned to or out of an appropriate bargaining unit.[77] Finally, special administrative problems are created in adjusting bargaining rights for itinerant employees who frequently shift from one employer to another[78] and for those in the maritime industry.[79]

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[74] Illustrative of the cases holding such employees eligible to vote are: *Matter of Union Premier Food Stores, Inc.*, 11 N. L. R. B. 270, 280; *Matter of Covington Weaving Co.*, 31 N. L. R. B. 1145; *Matter of Montgomery Ward & Co., Inc.*, 38 N. L. R. B. 297.

[75] Declared by the Board eligible to vote in the following cases: *Matter of Metro-Goldwyn-Mayer Studios*, 7 N. L. R. B. 662, 699; *Matter of Bisbee Linseed Co.*, 34 N. L. R. B. 272; *Matter of Hoberman*, 30 N. L. R. B. 1241; *Matter of Hawk & Buck Co., Inc.*, 12 N. L. R. B. 230, 234; *Matter of Medford Corp.*, 30 N. L. R. B. 256.

[76] Illustrative of the cases holding such employees eligible to vote are: *Matter of Nineteen Hundred Corp.*, 32 N. L. R. B. 327; *Matter of Rappaport*, 36 N. L. R. B. 484; *Matter of Western Union Telegraph Co.*, 36 N. L. R. B. 1209; *Matter of Electric Auto-Lite Co.*, 40 N. L. R. B. 1345.

[77] *E. g.*, *Matter of New Idea, Inc.*, 25 N. L. R. B. 265; *Matter of Mason Mfg. Co.*, 15 N. L. R. B. 295; *Matter of Western Union Telegraph Co.*, 32 N. L. R. B. 428.

[78] Granted bargaining rights in the following cases: *Matter of F. E. Booth & Co.*, 10 N. L. R. B. 1491, 1499; *Matter of Western Fisheries*, 17 N. L. R. B. 364; *Matter of Columbia River Packers Assn.*, 40 N. L. R. B. 246; *Matter of Monon Stone Co.*, 10 N. L. R. B. 64, 73, 74; *Matter of American Fruit Growers, Inc.*, 10 N. L. R. B. 316, 332; *Matter of Donovan Lumber Co.*, 10 N. L. R. B. 634, 650.

[79] *Matter of International Mercantile Marine Co.*, 1

The comprehensive administrative law of employment relationship which has been developed by the Board in representation cases removes any doubt that the question is a distinctive and technical one and that the interpretation and application of the employment relationship are matters of labor relations rather than of abstract statutory construction.

III

The Board's Determination That the Newsboys Involved Herein Are Employees Within the Meaning of the Act Is Supported by Substantial Evidence

The Board's determination (R. 111) that the newsboys involved herein[80] are employees is

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N. L. R. B. 384, 391, 392; *Matter of Standard Oil Co. of New Jersey*, 8 N. L. R. B. 936, 941; *Matter of Mobile Steamship Assn.*, 8 N. L. R. B. 1297, 1319; 9 N. L. R. B. 60, 61, 62.

[80] The Board has not held that all newsboys should be subject to the Act. In *Matter of Houston Chronicle Co.*, 28 N. L. R. B. 1043, decided on the same day as the cases at bar, the Board denied employee status to certain newsboys on the ground, *inter alia*, that the company did not regulate the number of papers to be sold or the place where they were to be sold. The company sold newspapers to anyone who cared to purchase them and retained no contact with or interest in the purchaser after the sale was consummated. The Board was also impressed with the fact that the newsboys sold a variety of other articles and that they joined a union primarily to suppress competition.

grounded in the following intermediate findings (R. 109):

> Through the district managers, who are authorized to act as the publishers' representatives in the circulation and distribution of their newspapers, the Companies hire the newsboys by the allotment of corners and spots, thus providing them with a place to work, furnish company-owned equipment and paraphernalia to facilitate newspaper sales, and require the newsboys' attendance at their post and attention to their work, within customary limits during relatively definite hours. Moreover, the Companies control the number of papers delivered to the newsboys for purposes of sale, limit their earnings by the establishment of a fixed "wholesale" and retail price for the newspaper, afford them a return privilege for unsold papers [with minor exceptions], and supervise the newsboys' selling activities as to such details of performance as the manner of calling, holding, and displaying the newspaper, and place of its sale within the allotted territory. Furthermore, the Companies at will discharge the newsboys, transfer them to other locations, and lay them off as disciplinary measures. The newsboy is not free to sell where he will; he must operate in a certain area under company-imposed restrictions; if he does not succeed in selling, he will be dismissed. Since the relationship contemplates services of an indefinite duration terminable at the will of

> either party, the newsboy has no vested interest in the newspaper business. Although he is not carried on the companies' pay roll, the newsboy is an integral part of the Companies' distribution system and circulation organization.

The Board referred to the test it has repeatedly applied (R. 108, n. 33; *supra*, p. 59), and concluded (R. 111):

> Finally, counsel for the Companies cite California and other local decisions establishing the status of newsboys as independent contractors with respect to the publisher's liability in tort and workmen's compensation proceedings. We do not herein pass upon the nature of the relationship for other purposes, but hold upon this record that the newsboys here involved are within the definition of employees as the term is used in this Act. Accordingly, we find that the newsboys involved in this proceeding are employees within the meaning of Section 2 (3) of the Act.

The facts summarized in the Statement (*supra*, pp. 3–25) amply support the findings and unmistakably bring the newsboys involved herein under the protection of the Act. The distinctive tests, described above (*supra*, pp. 55–67), for determining the existence of the employment relationship under the Act are fully met here. It is plain that the newsboys are involved in a service relationship. They are hired by respondents, are

engaged in the process of earning a living in furtherance of respondents' enterprises, are subject to disciplinary lay-off and discharge by respondents. Moreover, the pattern of their service involves a continuing participation in respondents' newspaper distribution activities which is characterized by fixed hours and by standard compensation rates constituting a payment for manual labor or a wage. The work is not limited in time by the performance of a particular task nor is the compensation for the application of a peculiar skill or the use and operation of special equipment. The individuals whose status is here in issue constitute a labor force performing the same tasks for the same respondents day after day, year after year. Equipped with neither special skill nor capital, the newsboys' bargaining position with respect to the problems of wages, hours, and working conditions which their work, by its very nature, generates, is glaringly unequal to that of the publishers. Section 1 of the Act.

Finally, the objective conditions which characterize the work of the newsboys as employment within the meaning of the Act are reflected in the conduct of the newsboys and respondents. The newsboys formed a labor organization which is chartered by, and affiliated with one of the recognized national labor groups.[51] Instead of attempt-

[51] Newsboys constitute a substantial occupational group (McDaniel, H. B., *The American Newsboy* (1941), p. 17)

ing to enter into individual contracts with respondents, they have sought to invoke the process of collective bargaining concerning their wages and working conditions. Respondents have, in fact, dealt with them collectively in the adjustment of grievances relating to these matters (R. 554, 664–668, 674–677, 873–874, 1085–1086). And in the elections conducted by the Board the majority of each of respondent's newsboys voted to have the Union act as their collective bargaining representative (R. 187–197, 237–240).

The court below not only improperly substituted a common-law standard for the statutory standard but it also independently reviewed the facts to find that the newsboys were merchants and were not engaged in a service relationship (R. 1850–1851). Such a view is untenable. Merchants are not hired and assigned a geographic

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and have been organized into more than 40 labor unions, affiliated with either the American Federation of Labor or the Congress of Industrial Organizations. Most of the unions in the field have been chartered by the International Printing Pressmen's and Assistants' Union of North America, A. F. of L. See the *Official Directory* (July 1942), and the *Service Bureau News Bulletin* (December 1942), of the Pressmen's Union and *Monthly Labor Review*, Vol. XXII, No. 2. The latter source contains an agreement covering terms and conditions of employment between a newsboys' union and a publisher.

A number of strikes have occurred among newsboys throughout the country and some of them have been broken through the use of unusual violence and intimidation. See Lundberg, F., *Imperial Hearst* (Modern Lib. Ed., 1937), pp. 161, 195, 300.

location by their suppliers;[22] they are not subject to elaborate controls with respect to the time during which they are to sell and promptly refused merchandise because the hours of sale and diligence used in selling displease the wholesaler (*supra*, pp. 15–21). Merchants are not normally classified into such categories as "full time," "temporary," "casual" and "part time" (*supra*, p. 5), transferred to new selling locations or refused merchandise altogether because the consumer complains of their conduct to the wholesaler (*supra*, pp. 15–16). A wholesaler does not threaten to refuse to deal with a merchant because he closes his establishment during the lunch hour (R. 728), and does not refuse to permit an authorized agent of the merchant to accept delivery of merchandise (R. 719–720). Merchants in short are not engaged in a personal relationship. Merchants normally risk capital and enjoy an opportunity for profit; such is not the case here.[23]

Contrary to the view of the court below, the fact that newsboys sell other publications does not, un-

[22] The court below (R. 1851) attributed the fact that each newsboy has an exclusive sales territory to "a tacit understanding between them." This is a serious misreading of the record (*supra*, p. 14).

[23] The statement of the court below (R. 1850) that the "extension of credit" to the newsboy is an evidence of his independent status is difficult to accept. The fact that the newsboy is not required to pay for his papers until he sells them is hardly such an "extension of credit" as to clothe him

der the circumstances of this case and for purposes of the Act, convert them into merchants. Newsboys are not free to purchase competing publications from other publishers. Indeed, they have even been forbidden to sell such publications and normally do so only in accordance with arrangements created by the publishers (*supra*, p. 24). It is plain that the facts relating to this practice presented by this case do not refute employment; they merely describe an aspect of the employment situation which is a subject for collective bargaining.[84]

The "purchase" by newsboys of corners in the public domain from those previously occupied in selling there—a practice which appears to be limited to Herald newsboys and to a few corners (R.

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with merchant status. If it were otherwise, route salesmen, waiters, account collectors, vacuum-cleaner and brush salesmen (see *infra*, pp. 80–81) would all be elevated to the role of businessmen. The only inference that may legitimately be drawn from the fact that the newsboy automatically "pays" for his papers at the end of the day by retaining a sum of money is that the newsboy is not required to risk his "capital," the absence of which is a conventional criterion of employment, and one which is strongly emphasized here by the fact that the newsboy is normally not charged for the papers which he does not sell.

[84] Plural employment is not uncommon in American industry, particularly on the railroads. See the Railroad Retirement Act of 1937, 45 U. S. C., sec. 228 (a) (b); Carriers Taxing Act of 1937, 45 U. S. C., secs. 261 (1) and 263. Compare the Referee's Opinion in *Order of Railroad Telegraphers* v. *Railway Express Agency*, No. 343, this Term, Record, pp. 236–238.

736, 922–923, 930–931, 939, 944–945)[85]—is not an index of merchant status. The newsboys buy nothing but the right to present themselves for employment; the publisher is not bound by the "sale," and is free to make his own arrangements (R. 953–957, 1044–1045, 1006–1007).[86] Nor does such "purchase" free the newsboy from the intimate control over his activities to which he would be subjected were he hired directly (see for example, R. 728–731, 736, 918). This is an instance of the familiar industrial abuse of job selling,[87] which has never been regarded as an obstacle to the establishment of an employment relationship. In fact, it emphasizes the need for regularizing hiring practices, a traditional subject of collective

[85] The wealth of evidence in the record regarding the publishers' practice of hiring and assigning newsboys to corners (*supra*, p. 14) plainly shows that such "sales" do not normally initiate the relationship.

[86] To the effect that the publisher's permission is normally required and sought before a corner is transferred see R. 942, 957, 1056, 924–925, 1007.

[87] Bulletin of the Industrial Commission of Ohio, Division of Investigation and Statistics, Report No. 24 (1916), *Job Selling in Industrial Establishments in Ohio;* Industrial Service Bureau, Bulletin No. 1 (1918), *Hiring and Firing Suggestions for Employers*, p. 5; Hamilton, W. I., *Employer-Employee Relations in Hotels* (1925), pp. 17–18; U. S. Dept. of Labor, Bureau of Labor Statistics, Bull. No. 555 (1932), *Cargo Handling and Longshore Labor Conditions*, p. 72; Statements of Bruce Hannon, Secretary, Maritime Federation of the Pacific, in *Hearings before the Committee on Merchant Marine and Fisheries*, House of Representatives, 76th Cong., 1st Sess., on H. R. 4051, May 10, 19, 22 (1939), pp. 17–19.

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bargaining. Also adverted to by the court below as an indication of merchant status is the fact that a few of the newsboys engage assistants for relief and other purposes (R. 1851). Even if the practice were far more prevalent than the record shows it to be,[88] it would merely duplicate a familiar industrial phenomenon which does not negative the employment relationship.[89] Finally, the fact that the newsboy is not credited in his returns for papers which are accidentally destroyed or stolen (but see R. 1396, 1290) is not as impressive as the court below deemed it to be (R. 1850).[90] Workers frequently are held accountable for losses and spoilage.[91]

The court below on the one hand ascribed unwarranted importance to the "purchase and sale" aspect of the relationship and on the other

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[88] The only references to the practice which occur in the record are: Herald, R. 719, 743, 747, 931–932, 939, 946, 982, 1004, 1336–1337; *Examiner*, R. 1488.

[89] See Ashworth, J. H., *The Helper and American Trade Unions*, Johns Hopkins Studies in Historical and Political Science, Series XXXIII, No 3 (1915), Ch. II, *The Hiring and Compensation of the Helper*, pp. 67–77; Motley, J. M., *Apprenticeship in American Trade Unions*, Johns Hopkins Studies, Series XXV (1907), p. 22; Webb, Beatrice and Sidney, *Industrial Democracy* (1920), p. 459.

[90] Far more impressive is the fact that the newsboys receive full credit for the papers which are *not* stolen or destroyed (*supra*, p. 22).

[91] Dobb, M., *Wages* (1938), pp. 76–77; Webb, Beatrice and Sidney, *Industrial Democracy* (1920), p. 315; Alford, L. P., ed., *Cost and Production Handbook* (1934), p. 108; Hutchins, Grace, *Labor and Silk* (1929), p. 106: Mack, Francis, *Waste Elimination Incentives* (1928), p. 35.

ignored the controls which are intimately involved in the relationship. These elaborate controls are no accident and the Board's finding with respect to them cannot be characterized as "misleading", as asserted by the court below (R. 1851), merely because they are attended by an ambiguous sale.

The work of the newsboys and the complete and constantly exercised controls by respondents over it cannot be explained as a cinematographic series of sales and resales burdened with conditions. The facts in this case demonstrate that the activities of the newsboys involved herein are a necessary part of a unified enterprise devoted to the sale of news to the public. Circulation is the life-blood of a newspaper (cf. *Lovell v. City of Griffin*, 303 U. S. 444) and the newsboys in this case have been integrated by respondents into a complex marketing system which is directed to maintaining and increasing circulation among the members of the public (*supra*, pp. 6–14, see also R. 545, 1151, 1160, 1352, 1593). It is plain that the purpose of this system is not to sell papers to these newsboys [92] but to reach the large numbers of individuals who read the news and advertisements. To view the facts otherwise is to disfigure them. It is because respondents

[92] The practice by newsboys of holding out papers which they did not sell in order to meet a quota and thus to earn a bonus is described at R. 1321–1323. This bonus system which was used by the Times was dropped in 1935 (R. 1321).

have made the newsboy a key figure in their efforts to reach the public in an organized and systematic way that the relationship here presented is one of personal service characterized by close control.[93] Indeed, if the newsboys involved herein are not employees under the Act then it is difficult to see upon what basis individuals engaged in outside selling and distribution activities which involve substantially greater freedom from control than is present here can be held to be in employment. Yet such individuals and others engaged in related activities have frequently been held employes under the common law and other statutes certainly no broader in scope than the Act.[94]

IV

The Newsboys Here Involved Are Employees Under Usually Accepted Common Law Tests

As we have already shown, the applicability of the Act to the newsboys here involved turns upon the statutory language, purpose, and policy. However, even under common law concepts, the newsboys would be regarded as employees.

[93] The closeness of the control exhibited by the relationship in issue, particularly with respect to promptness and diligence, is explained in part by the fact that news is "the world's most perishable commodity" (McDaniel, *op. cit.*, p. 17), "a prior edition after a later edition appears on the street is unsalable" (R. 570). Cf. *International News Service* v. *Associated Press*, 248 U. S. 215, 238.

[94] See n. 8, p. 80, *infra*.

"Whenever the employer retains the right to direct the manner in which the business shall be done, as well as the result to be accomplished," the relation of master and servant exists. *Singer Manufacturing Co.* v. *Rahn,* 132 U. S. 518, 523.[95] We believe that the record establishes the existence and exercise of such a right here. The record shows that the newsboys' work was subject to the supervision not only of checkmen, where they were used (*supra,* p. 7), but of district managers and, in some cases, of "spotters" as well. Indeed, it was the duty and function of the district managers to oversee the activities of the newsboys (*supra,* p. 11). In performance of this duty, district managers direct the newsboy exactly how he shall operate within the territory assigned, where he shall stand, how he shall display his papers in racks, where he shall post advertising placards, and even exactly how he shall hold his papers (supra, pp. 15–21). The record unmistakably shows the control was substantial and that "if instructions were given, they would have to be obeyed." *Press Publishing Co.* v. *Industrial Accident Commission,* 190 Cal. 114, 121, 210 Pac. 820, 823.

[95] Although the court below paid lip service to the fact that it was dealing with legislation "based upon a broad policy of public benefit" (R. 1848), it selected from among conflicting formulations of the common law one which states the test most rigidly: "The control referred to must be complete control of the means and methods of performance" (R. 1849).

The court below, in holding that "the publisher had at best a limited control over the activities of the newsboys" (R. 1850), apparently ignored the fact that the test of control does not require that the work be performed on the employer's premises or under his ever-vigilant eye. The nature of the employee's work "may be such that much or little supervision may be necessary." *Fischer* v. *Industrial Commission*, 301 Ill. 621, 629, 134 N. E. 114, 117. See also *Western Express Co.* v. *Smeltzer*, 88 F. (2d) 94, 97 (C. C. A. 6); *Franklin Coal and Coke Co.* v. *Industrial Commission*, 296 Ill. 329, 129 N. E. 811; *Town of Eagle* v. *Industrial Commission*, 221 Wis. 166, 266 N. W. 274.[96]

The court below not only stated and applied the control test with unwarranted rigidity, but it disregarded collateral tests frequently applied at common law. Certainly, the newsboy cannot be said to be engaged in a distinct occupation or calling[97] in furtherance of which he is engaged for a specific job or piece of work. Vending news-

[96] In concluding that a timber sawyer who had agreed to cut logs at a specified "piece rate" was an employee, the Wisconsin Supreme Court in *Allaby* v. *Industrial Commission*, 200 Wis. 611, 614, 229 N. W. 193, 194, said: "What details of any consequence were there left to the exclusive control of Rogers [the employee]? There only remained for him to control the extent and time of the application of his muscular power to the reduction of the designated trees to veneer logs or to ties. * * *"

[97] See Restatement of the Law of Agency, Section 220 (2) (b); Leidy, Paul A., *Salesmen as Independent Contractors*, 28 Mich. Law Rev. 365.

papers does not require any particular skill. While the work is carried on in the public domain, it is respondents who decide where it is to be done, assigning the newsboys to a particular corner and providing him with such tools and instrumentalities as are necessary, such as stands, racks, change aprons, and advertising material (*supra*, p. 23).[26]

Any semblance of independence in the newsboys is dispelled by respondents' ability to discharge them at will.[27] While the court below characterized such dismissals as a refusal "to deliver further merchandise" (R. 1851), they are, realistically viewed, discharges.[1] It could hardly

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[26] Both the assignment of a place to work and the provision of instrumentalities for work are evidences of common law employment. Restatement of the Law of Agency, Section 220 (2) (e).

[27] An important index of common law employment. E. g., *Jack & Jill, Inc.* v. *Tone*, 126 Conn. 114, 9 A. (2d) 497; *Aisenberg* v. *C. F. Adams Co., Inc.*, 95 Conn. 419, 111 A. 591; *Robert C. Buell & Co.* v. *Danaher*, 127 Conn. 606, 18 A. (2d) 697; *Industrial Commission* v. *Bonfils*, 78 Colo. 306, 241 Pac. 735.

[1] See *Schomp* v. *Fuller Brush Co.*, 124 N. J. L. 487, 490–491, 12 A. (2d) 702, 704, when the court in holding that an outside salesman was an employee and not an independent contractor, stated: "* * * he must sell a given amount of merchandise or he will be dismissed. True, it is a subtle dismissal in this that the 'dealer' will be advised by a manager, as it appears in the depositions, that he 'isn't fitted for this work and he would be better off to find something else,' etc.; that he would be advised to 'turn in your case' and this,

be argued that the newsboy could continue "in business" on the public sidewalk and sell merchandise other than newspapers (cf. *Wilson* v. *McGill*, 42 D. & C. (Pa.) 74) or that the publisher would not, and does not, promptly assign a replacement to "cover" the corner.

Nor are the newsboys endowed with independence under the common law tests, as usually applied, because they are not paid fixed wages,[2] or because they sell other publications.[3] And those few newsboys who have "purchased" cor-

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if the dealer did not comply, would be followed by what is called a 'termination notice' which meant that no merchandise would, after a given date, be shipped to the 'dealer' who does not accomplish the company's unstated minimum of sales. This, we think, is complete control in fact—even if by the mechanics of written contract it seems remote."

[2] The master and servant relationship may exist although the servant neither expects nor is entitled to compensation. *Southern Railway Co.* v. *Black*, 127 F. (2d) 280, 282 (C. C. A. 4). See also *Singer Manufacturing Co.* v. *Rahn*, 132 U. S. 518; *Fleming* v. *Palmer*, 123 F. (2d) 749, 762 (C. C. A. 1), certiorari denied, 316 U. S. 662; *Hillen* v. *Industrial Accident Commission*, 199 Cal. 577, 581, 250 Pac. 570; remuneration of a common law employee may consist of the difference between the price he pays his employer for goods and the price at which he sells them. Cf. *State Compensation Fund* v. *Industrial Accident Commission*, 95 Colo. 309, 35 P. (2d) 849, the *Sisk* case cited n. 3, *infra*; *In re Scatola*, 282 N. Y. 689, 26 N. E. (2d) 815.

[3] See *Press Publishing Co.* v. *Industrial Accident Commission*, 190 Cal. 114, 210 Pac. 820; *Shields* v. *William Freihofer Baking Co.*, 147 Pa. Super. 455, 24 A. (2d) 54; *Sisk et al.* v. *Arizona Ice and Cold Storage Co.*, 141 P. (2d) 395 (Ariz.).

ners[4] or engaged assistants[5] would not for such reasons be denied common law employee status. Finally, neither the fact that a Herald newsboy may also work for the News[6] or the fact that the work is formally distributed and compensated for through a purchase-and-sale arrangement[7] can be regarded as inconsistent with an employment relationship measured by common law standards.

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[4] Cf. *Boehm* v. *Spreckels*, 183 Cal. 239, 191 Pac. 5 (purchaser of newspaper route acquires only an opportunity to offer himself to publisher as a substitute for vendor). To the extent that it be urged that the "purchase" of a corner in the public domain constitutes a financial investment in an enterprise, clothing the "purchaser" with the status of an enterpreneur, it need only be noted that more substantial contributions have been held not to negative employment. *Grand Rapids Gravel Co.* v. *United States* (W. D. Mich.), decided March 30, 1943, Commerce Clearing House, Unemployment Insurance Service, Federal, Par. 9047; *Western Express Co.* v. *Smeltzer*, 88 F. (2d) 94 (C. C. A. 6); *Rozran* v. *Durkin*, 381 Ill. 97, 45 N. E. (2d) 180 (driver using own truck and paying own operating expenses).

[5] *Gulf Refining Co.* v. *Brown*, 93 F. (2d) 870, 873 (C. C. A. 4); *Hillen* v. *Industrial Accident Commission*, 199 Cal. 577, 250 Pac. 570.

[6] *Taylor* v. *St. Paul's Universalist Church*, 109 Conn. 178, 182, 145 Atl. 887, 889 ("one may hold the legal relation of employee to more than one employer at the same time").

[7] For example, *Salt Lake Tribune Publishing Co.* v. *Industrial Commission*, 99 Utah 259, 102 P. (2d) 307; *Schomp* v. *Fuller Brush Co.*, 124 N. J. L. 487, 12 A. (2d) 702, aff'd, 126 N. J. L. 368, 19 A. (2d) 780; *Creameries of America* v. *Industrial Commission*, 98 Utah 571, 102 P. (2d) 300. See also, Wolfe, *Determination of Employer-Employee Relationships in Social Legislation*, 41 Col. Law Rev. 1015, 1033–1034.

It is only when an artificial ornamentation of "purchase and sale," "wholesale price" or "retail price" is permitted to obscure the realities of the relationship in issue that it is possible to view the newsboys as merchants. "Rather, it appears, that on the one side there is 'an intimacy of control and on the other a fullness of submission that imports the presence of a sovereign' as a master, we are reminded, was sometime called in the old books."[8]

The newsboys' basic relationship to respondents is, we believe, not distinguishable from other types of outside workers who are engaged in direct selling, transportation, canvassing and solicitation, and related activities. Though many of the individuals engaged in such occupations are permitted considerable more latitude of discretion as to methods and hours of work, they have been held in employment under state unemployment compensation laws and other legislation.[9] No other conclusion seems possible here.

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[8] *In re Morton*, 284 N. Y. 167, 30 N. E. (2d) 369.

[9] Newsboys: *Salt Lake Tribune Publishing Co.* v. *Industrial Commission*, 99 Utah 259, 102 P. (2d) 307; *Pacific Employers Insurance Co.* v. *Industrial Accident Commission*, 3 Cal. (2d) 759, 47 P. (2d) 270, reversing 38 P. (2d) 809; *In re Scatola*, 282 N. Y. 689, 26 N. E. (2d) 815; *Wilson* v. *Times Printing Co.*, 158 Wash. 95, 290 Pac. 691; *Hampton* v. *Macon News Printing Co.*, 64 Ga. App. 150, 12 S. E. (2d) 425; *Associated Indemnity Corp.* v. *Industrial Accident Commission*, 128 Cal. App. 104, 16 P. (2d) 774; *Globe Indemnity Co.* v. *Industrial Accident Commission*, 208 Cal. 715,

CONCLUSION

The National Labor Relations Act does not echo a common law test of the employment relationship; the overriding purpose and policy of the legislation must be taken into account. These, as well as the language of the Act, furnish the basis for an administrative decision, and in effect set a standard to be applied by the Board in varying situations. The Board's determination of the employment relationship should not be

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284 Pac. 661; *Press Publishing Co.* v. *Industrial Accident Commission*, 190 Cal. 114, 210 Pac. 820.

Route salesmen: *Sisk et al.* v. *Arizona Ice and Cold Storage Co.*, 141 P. (2d) 395 (Ariz.) (ice route driver-salesmen paid difference between wholesale and retail price, hire and pay own assistants, maintain and operate own trucks, advanced credit until end of selling day and not required to pay for unsold ice returned in good condition; drivers fix own hours, sell other items beside ice, and do other work); *Pure Baking Co.* v. *Early* (E. D. Va.), decided March 24, 1943, Commerce Clearing House, Unemployment Insurance Service, Federal, Par. 9062 ("vendees" operating bakery routes); *In re Castaldo*, 263 App. Div. 758, 30 N. Y. S. (2d) 736.

Commission salesmen and distributors: *In re Morton*, 284 N. Y. 167, 30 N. E. (2d) 369; *Jack & Jill, Inc.* v. *Tone*, 126 Conn. 114, 9 A. (2d) 497 ("vendees"); *Creameries of America* v. *Industrial Commission*, 98 Utah 571, 102 P. (2d) 300 ("vendees"); *Singer Sewing Machine Co.* v. *State Unemployment Compensation Commission*, 103 P. (2d) 708 (Ore. 1940); *Matter of Electrolux Corp.*, 288 N. Y. 440, 43 N. E. (2d) 480; *In re Foy*, 116 P. (2d) 545 (Wash.) ("vendees" of utensils); *Robert C. Buell & Co.* v. *Danaher*, 127 Conn. 606, 18 A. (2d) 697; *Stone* v. *United States* (E. D. Pa.), decided September 16, 1943, Commerce Clearing House Unemployment insurance Service, Federal, Par. 9077; *Globe Grain & Milling Co.* v. *Industrial Commission*, 98 Utah 36, 91 P. (2d) 512, modified on rehearing, 98 Utah 48, 97 P. (2d) 582.

reviewed *de novo* by the courts, attempting to apply a "fact"—"law" yardstick, but should be sustained if reasonable and supported by the evidence. The Board's determination that the newsboys here are employees meets these requirements. Indeed, even under a common law test, the newsboys are employees. For these reasons, we respectfully submit that the judgments of the court

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Taxi drivers and truck owner-operators: *Kaus* v. *Unemployment Compensation Commission*, 230 Iowa 860, 299 N. W. 415; *Kaus* v. *Huston*, 35 F. Supp. 327, aff'd. 120 F. (2d) 183 (C. C. A. 8); *Rozran* v. *Durkin*, 381 Ill. 97, 45 N. E. (2d) 180; *Grand Rapids Gravel Co.* v. *United States* (W. D. Mich.), decided March 30, 1943, Commerce Clearance House Unemployment Insurance Service, Federal, Par. 9047; *In re Farwest Taxi Service*, 114 P. (2d) 164 (Wash.).

Insurance agents and canvassers: *Industrial Commission* v. *Northwestern Mutual Life Insurance Co.*, 103 Colo. 550, 88 P. (2d) 560; *Unemployment Compensation Commission* v. *Jefferson Standard Life Insurance Co.*, 215 N. C. 479, 2 S. E. (2d) 584; *In re Mid-America Co.*, 31 F. Supp. 601 (S. D. Ill.); *Unemployment Compensation Commission* v. *Harvey*, 179 Va. 202, 18 S. E. (2d) 390; *Life & Casualty Insurance Co.* v. *Unemployment Compensation Commission* 178 Va. 46, 16 S. E. (2d) 357; *Industrial Commission* v. *Northwestern Mutual Life Insurance Co.*, 103 Colo. 550, 88 P. (2d) 560; *Northern Oil Co.* v. *Industrial Commission*, Commerce Clearing House Unemployment Insurance Service, decided July 28, 1943, Utah, Par. 8068.

See, also, *Issues Involved in Determining Eligibility Under the Old Age and Survivors Insurance Program*, Social Security Yearbook, 1941, pp. 47–51; *Some Aspects of Coverage Under Insurance Provisions of the Social Security Program*, Social Security Yearbook, 1940, pp. 74–75.

below should be reversed and the causes remanded with directions to enforce the Board's orders in full.

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JANUARY 1944.

APPENDIX

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Title 29, Sec. 151, *et seq.*) are as follows:

> SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce * * *
>
> The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce * * *
>
> Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SEC. 2. When used is this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service

of any family or person at his home, or any individual employed by his parent or spouse.

* * * * *

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

SEC. 9 (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment. * * *

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertin* such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any per-

* So in original.

son from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such

person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. * * *

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. * * * Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 336

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HEARST PUBLICATIONS, INCORPORATED

No. 337

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

STOCKHOLDERS PUBLISHING COMPANY, INC.

No. 338

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HEARST PUBLICATIONS, INCORPORATED

No. 339

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE TIMES-MIRROR COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

This reply brief is addressed to respondents' challenge of the Board's determination of the appropriate bargaining units, a point not passed upon by the court below. Generally, with respect to the criteria which may properly be utilized by the Board in making unit determinations, see *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board,* 313 U. S. 146.

With respect to the News, the Board found that the following group of employees constituted an appropriate bargaining unit: all full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys (R. 115). "Full-time" newsboys were defined to include newsboys who sell to the general public the Five, Six, Eight, Nine and Ten Star or the Six, Eight, Nine and Ten Star editions of the News five or more days a week as well as those who sell the Four Star and previous editions of the News for a minimum of four hours per day between the hours of 4 a. m. and 10 a. m., five or more days a week (R. 142). The term "part-time" was defined to include newsboys selling fewer than the Six, Eight, Nine, and Ten Star editions of the News per day and newsboys selling the Four Star edition of the News less than four hours per day (R. 140). The term "bootjacker" was defined to mean newsboys who sell at places other than established corners (R. 112, 1139–1141).

The News argues that the Board's unit is improper because it is based upon an arbitrary definition of "full-time" employment and speculates that the definition adopted would exclude individuals who conceivably might work for substantial portions of a day or week (Br. 50–51).

Certainly a measure of full-time employment which is based upon a minimum of a five-day week is reasonable on its face, and it is equally reasonable to measure the work of morning newsboys by hours since they sell primarily one edition and of afternoon newsboys by editions since they sell four or five editions.[1] In any event, the objections urged by this respondent to the definition of "full-time" employment are hardly meritorious in view of the fact that the Board adopted precisely the definition to which this respondent had stipulated (R. 1140–1141, 139–

[1] The News prints ten editions daily. The first three editions are not sold on the city streets but are used for suburban dealers and routes (R. 1079–1080, 1143–1144). The fourth edition is sold on the streets in the morning and represents 30 to 35 percent of the total copies of the News sold on the streets (R. 1080, 1088). The fifth, sixth, eighth, ninth and tenth editions are sold on the streets in the afternoon by newsboys who also handle the Herald (R. 1079–1081, 1066, 789–790, 841, 851, 908). The seventh edition is used for route delivery only (R. 1081). The fourth edition is handled by a group of district men known as the morning men (R. 1082, 1113–1114, 1143–1144) and the other editions which are sold in the afternoon are handled by a different group of district men (R. 1081, 789–791, 1125).

140). The News also argues that the absence of a definition of checkmen or evidence as to their number vitiates the Board's unit determination (Br. 47–48). However, the News furnished a pay-roll list of all its checkmen (R. 1089–1093), and the record contains elaborate evidence as to their duties (R. 749–750, 790–791, 805, 808, 833–834, 899, 1089–1093, 1118, 1124, 1129). Nor is the News' contention that the record fails to show what percentage of the newsboys and checkmen are Union members (Br. 49–50) accurate. The eligibility list prepared at the time of the election showed 349 persons within the unit defined by the Board (R. 189). Of these, 191 voted to have the Union represent them (R. 189). The News did not object to the accuracy of the eligibility list (R. 165–168).

With respect to the Herald, the Board found the following group of employees to constitute an appropriate bargaining unit: All full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys (R. 115). "Full-time" newsboys were defined (R. 141–142) to include newsboys who regularly sell to the public five or more editions per day, five or more days a week and "part-time" newsboys were defined as those selling less than five editions a day or for less than five days a week.

The record fully sustains the Board's exclusions from the unit. Bootjackers are roving news-

boys who have no established corners or spots but sell to the general public wherever they choose (R. 112). The record shows that bootjackers, temporary, and part-time newsboys are, for the most part, schoolboys; they sell papers after school, do not look upon their work as permanent or regular, nor depend upon it for a livelihood (R. 860–861, 865). As the union organizer testified (R. 864), "they don't work steady; they are going and coming and don't depend on it for a livelihood. That is, it don't make much difference whether they are working or not. In most instances they just work for spending money or something like that." The part-time newsboys' earnings vary from 50 cents to $1.50 or $2.00 a day (R. 865). On the other hand, the full-time newsboys are primarily mature or elderly men who look upon this work as a regular job and depend upon their daily earnings for support (Bd. Br. pp. 5–6).

The Herald finds the circumstance that the Board's unit with respect to the Herald does not exclude *all* schoolboys fatal to its appropriateness (Br. 96). But in shaping the unit the Board pointed out that those included in the unit are "*in general,* mature individuals who daily rely upon their earnings from the street vending of newspapers as their source of support" [italics supplied] (R. 115). Certainly the unit is not rendered inappropriate because it draws the line between full and part time and thereby includes those few school-

boys who happen to sell full time.[2] As in the case of the News, the Herald attacks the definition of "full-time" employment despite the fact that it stipulated to the meaning adopted by the Board (R. 58–60, 132–134).[3]

With respect to the Times, the Board found that the following group of employees constituted an appropriate bargaining unit: All newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, five or more days a week, within Los Angeles and Glendale, California, except temporary newsboys (R. 116). "Established spot" is defined as a place where a newsboy has engaged in the street sales of the Times five or more days a week for a period of six consecutive months or more, and the term

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[2] It is apparent that the unit challenged consisted primarily of adults (R. 599, 713, 727, 735, 746, 799–800, 804, 859–860, 875, 878, 884, 896, 930, 939, 945, 981, 1117).

[3] The Herald, being an evening paper (R. 49), unlike the News (see n. 1, *supra*) does not have separate groups of district men for morning and afternoon editions but has only "one organization" (R. 546). The presses on its first edition begin running at 9:00 in the morning and on the last begin running at 5:00 in the afternoon (R. 546–547). The 9:00 o'clock edition is known as the Green Flash, the 10:30 as the Latest News, the 12:30 as the Sports Edition, the 2:30 as the Night Edition, the 4:00 as the Night Final, and the 5:00 as the Seven-Star or Race Extra (R. 546–547, 656, 682–685, 702, 711–713, 897–899, 913). The newsboys who "start work on one of our earlier editions, either the Green Flash or the Latest News, or the first Sports, and work from that time on until late in the evening" are referred to in the record by the Herald as "full-time" or "all day hustlers" (R. 613–631).

"temporary" newsboy refers to a newsboy who has engaged in the street sale of the Times for thirty days or less (R. 113–114, 1304–1305). This definition, which was offered by the Union and adopted by the Board was at no time opposed by the Times (see R. 1305).

Complementing the position of the Herald which attacks the Board's unit because it fails to exclude every schoolboy, the Times objects to the unit upon the ground, *inter alia*, that it excludes temporary employees who are not schoolboys (Br. 52–53). The Times' insistence (Br. 47–48) that the Board's unit determination is arbitrary because it excludes temporary and casual employees is unrealistic to the point of captiousness. And its unparticularized objections to the use of the term "established spot" scarcely prove that the Board improperly adopted it as a measure of regular as opposed to casual employment.

With respect to the Examiner, the Board found that the following group of employees constituted an appropriate bargaining unit: All newsboys engaged in the street sale of the Examiner at established spots four or more hours a day, five or more days a week, within Los Angeles, California, except temporary newsboys (R. 115–116). "Established spot" is defined as a place where a newsboy has engaged in the street sales of the Examiner five or more days a week for a period of six consecutive months or more, and the term "tempo-

rary" newsboy refers to a newsboy who has engaged in the street sale of the Examiner for thirty days or less (R. 113–114, 1347). This definition which was offered by the Union and adopted by the Board was at no time opposed by the Examiner (see R. 1347–1348).

The Examiner (Br. 63–65) challenges the unit because it might exclude some mature individuals dependent upon earnings from newspaper sales for a livelihood in situations where such individuals are casually employed. But the fact that the Board disregarded casual and unorthodox work patterns emphasizes rather than weakens the appropriateness of its unit determination. And a stable bargaining structure, erected upon regularity of tenure and full-time employment, is not to be destroyed because it has no room for some individuals who might resemble those to whom in general the Board desired to accord bargaining rights. The Examiner's attacks upon the unit in this respect becomes particularly far-fetched when it is noted that the Board's exclusions which are challenged are based upon diversity not of function but of tenure, and that those newsboys asserted to be unwarrantedly excluded from the unit become qualified for the unit as their service and tenure are regularized. Finally, the Board's unit exclusions cannot be rendered arbitrary as the Examiner seeks to do (Br. 65, n. 91) by positing hypothetical situations which are not shown to be

related to actual practice. Grouping employees for bargaining purposes is a practical matter and is guided by considerations far more flexible and dynamic than those urged by the Examiner. Indeed, all of the respondents have adopted an abstract approach to the unit problem which is wholly alien to the realities of collective bargaining, and which is indeed a counterpart of the view taken by them of the question whether newsboys are their employees.

The Times (Br. 50–52), the Examiner (Br. 65) and the Herald (Br. 97) seek to challenge the unit determination because the Board, in shaping the units, excluded newsboys selling newspapers in suburban Los Angeles with the exception of the newsboys selling the Times in Glendale. The Board's decision to exclude suburban newsboys except those selling the Times in Glendale rests upon a finding that the organization by the union had not been extended to the suburban group generally and that no other labor organization was seeking to represent respondents' employees on a more comprehensive scale (R. 115). In giving weight to this consideration, the Board drew upon long administrative experience and applied a well-established policy. As early as 1937 the Board stressed the "extent of organization" factor in its unit determinations as an important consideration in giving effect to the policies of the Act. *Matter of R. C. A. Communications, Inc.*, 2 N. L. R. B. 1109, 1115. In the same year the Board again

invoked the "extent of organization" principle in *Matter of Gulf Oil Corp.*, 4 N. L. R. B. 133, 137, and declared that, "whenever possible, it is obviously desirable that, in the determination of the appropriate unit, we render collective bargaining an immediate possibility." The "extent of organization" principle has since been reiterated by the Board in a long series of decisions[4] and has received judicial approval. *National Labor Relations Board* v. *Botany Worsted Mills*, 133 F. (2d) 876 (C. C. A. 3), certiorari denied, 319 U. S. 751; *National Labor Relations Board* v. *Oliver Machinery Co.*, decided December 16, 1943 (C. C. A. 6), enforcing without opinion 47 N. L. R. B. 440.

The Times asserts (Br. 54) that it will be inconvenient to bargain with such a unit since it may "be obliged to bargain with many units instead of one." But, as the court pointed out in the *Botany Worsted* case (133 F. (2d) at 879) "respondent does not consider it impractical to bargain with every single employee separately." The Examiner and the Herald contend that the unorganized suburban newsboys should have been grouped with those in Los Angeles. Had the Board dismissed the Union's petition for certification on this ground a large group of newsboys seeking

[4] National Labor Relations Board, *Third Annual Report* (1938), pp. 157–158; *Fourth Annual Report* (1939), pp. 83–84; *Sixth Annual Report* (1941), p. 63; *Matter of Swift & Co.*, 42 N. L. R. B. 1184; *Matter of Pacific Gas & Electric Co.*, 44 N. L. R. B. 665.

to bargain collectively would have been denied the opportunity of utilizing the machinery of the Act for the solution of their problems until such indefinite time in the future as newsboys selling respondents' newspapers throughout suburban Los Angeles should become organized. No justification for such a result is presented. The Board's refusal to dilute the unit by adding to it a group of geographically removed employees who are not interested in collective bargaining was plainly not an abuse of discretion.

As the foregoing analysis discloses, in grouping the newsboys in bargaining units, the Board considered (R. 115) (1) the relative tenure of employment, (2) the regularity of employment, (3) the diverse interests inherent in full-time and part-time or temporary work, (4) the difference in the working conditions of the bootjackers who are not assigned to a definite spot, (5) the extent of organization, and (6) the desires of the only labor organization seeking representation. These are factors which the Board has frequently considered decisive in determining the bargaining unit best suited to give effect to the policies of the Act.[8]

Far from being "so unreasonable or capricious as to pass the bounds of permissible discretion"

[8] See National Labor Relations Board, *Third Annual Report* (1938), pp. 157–158; *Fourth Annual Report* (1939), pp. 83, 84; cf. *Fifth Annual Report* (1940), pp. 64, 70–71; *Sixth Annual Report* (1941), pp. 63, 70.

(*Marlin-Rockwell Corp.* v. *National Labor Relations Board*, 116 F. (2d) 586, 587 (C. C. A. 2), certiorari denied, 313 U. S. 594),* the Board's unit determination is firmly based upon well-developed administrative standards for grouping employees for bargaining purposes. Application of these standards in the instant cases is not open to serious challenge.

Respectfully submitted,

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FEBRUARY 1944.

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* The courts have uniformly held that an appropriate unit determination by the Board will not be disturbed unless arbitrary or capricious. E. g.; *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 113 F. (2d) 698 (C. C. A. 8), affirmed, 313 U. S. 146; *International Association of Machinists* v. *National Labor Relations Board*, 110 F. (2d) 29, 46 (App. D. C.), affirmed, 311 U. S. 72; *National Labor Relations Board* v. *Botany Worsted Mills*, 133 F. (2d) 876 (C. C. A. 3), certiorari denied, 319 U. S. 751.

U. S. GOVERNMENT PRINTING OFFICE: 1944

FILE COPY

OCT 9 1943

IN THE

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October Term, 1943

No. 336

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

HEARST PUBLICATIONS, INCORPORATED.

No. 337

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STOCKHOLDERS PUBLISHING COMPANY, INC.

No. 338

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No. 339

NATIONAL LABOR RELATIONS BOARD,

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vs.

THE TIMES-MIRROR COMPANY.

BRIEF OF RESPONDENT IN NO. 336 IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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THE TIMES-MIRROR COMPANY.

BRIEF OF RESPONDENT IN NO. 336 IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Respondent, Hearst Publications, Incorporated, publisher of the Los Angeles Examiner, presents the following brief in opposition to the National Labor Relations Board's petition for a writ of certiorari in case No. 336 (being No. 10112 in the court below).

Opinion Below.

The opinion of the Circuit Court of Appeals is reported in 136 Fed. (2d) 608.

Jurisdiction.

The decree of the Circuit Court of Appeals was entered on June 10, 1943. The Board's petition for writ of certiorari was filed September 9, 1943. Notice of the filing of such petition and copy of the petition and of the record were served on counsel for this respondent on September 18, 1943. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

Statement.

Petitioner's Statement is inaccurate in certain respects.

Petitioner states (p. 6) that the district managers "keep lists of the newsboys in their districts." In the case of this respondent none of the newsboys were carried upon its payroll and there were no company records showing their names. [R. 1349, 1402, 1493.] In some cases company representatives knew the newsboys only by their nicknames. [R. 1600.] At the time of the hearing in the certification proceedings, this respondent was unable to produce any list of the names of its newsboys. [R. 1402, 1403, 1493.]

Herein references to pages of the record are designated R. — Italics throughout this brief have been supplied.

Petitioner also states (p. 6 footnote) that "checkmen" were "paid a small salary for performing" a distribution service. This respondent had no "checkmen," if by this term is meant newsboys who received money or checks from the company for services performed. Nor is it true, as stated by petitioner (p. 6 footnote), that "main spot" boys were ever "conceded" to be employees.

Petitioner also states (p. 7) that this respondent maintains "supervision" over the newsboys through "'checkers' who patrol the districts, noting whether the checkmen and newsboys . . . 'hustle' with due diligence, follow instructions as to the manner of displaying and calling papers, and otherwise conduct themselves in accordance with rules." There was no evidence that this occurred. This respondent's checker traveled a district for several days consecutively with months between each such check-up [R. 1451] to see that the territory was "covered," not only by newsboys, but by other retailers, *e. g.*, newsstands and drug stores. [R. 1446, 1450.] The sole duty he performed was to see that the "sales outlets" in the district were covered. [R. 1446, 1449.] There was no evidence that he noted or reported whether newsboys "hustled" or followed "instructions as to the manner of displaying and calling papers," or "conducted themselves in accordance with rules." There was no evidence that there were any rules. There was no evidence that the checker ever spoke to a single newsboy. [R. 1452.]

Petitioner also states (p. 8) that respondent furnishes transportation to the newsboys from its plant to their respective corners and after work is over brings them back. The evidence was that this was an accommodation provided if and only if requested by the newsboys. [R. 1566.]

Petitioner also states (p. 12) that a newsboys' union "adjusted grievances through collective action." If this implies that this respondent ever dealt with the union as a representative of respondent's employees, then there was no evidence to substantiate any such implication. At meetings at which this respondent's business manager was present [R. 668], it was pointed out that the newspapers would not consider the negotiation of a contract with the union until it should be decided that the newsboys were employees. [R. 672, 680.]

Respondent does not concede that there was evidence supporting petitioner's general assertion (p. 6) that "newsboys are 'hired' and 'fired,' disciplined, directed, and supervised . . .," or the assertion (pp. 8, 9) that respondent exercised "extensive control over the details of the newsboys' selling activities," or that respondent instructed the newsboys "in what part of the street to stand, and how to hold and display the papers."

ARGUMENT.

1. The Court Below Properly Determined for Itself the Meaning of "Employee" as Used in the National Labor Relations Act.

The meaning of the word "employee" as used in the Act was a judicial question.[1] It was a question which the court below was required to determine for itself. In making such determination the court below was not bound to adopt the conclusion of the Board upon this judicial question. In placing its own construction on the word "employee," the court below acted in accord with applicable decisions of this court.[2]

Gray v. Powell, 314 U. S. 402; *Shields v. Utah Idaho Central R. Co.*, 305 U. S. 177; *South Chicago Coal & Dock Co. v. Bassett*, 309 U. S. 251; *Rochester Telephone Corp. v. United States*, 307 U. S. 125; and *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381, cited by

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[1] In *United States v. American Trucking Ass'ns.*, 310 U. S. 534, 544, it was said: "The interpretations of the meaning of statutes, as applied to justiciable controversies, *is exclusively a judicial function.*"

[2] As said in *Sanford's Estate v. Commissioner of Int. Rev.*, 308 U. S. 39, 52: "*But courts are not bound to accept the administrative construction of a statute* regardless of consequences, even when disclosed in the form of rulings."

In *Federal Trade Comm. v. Gratz*, 253 U. S. 421, 427, it was said: "The words 'unfair method of competition' are not defined by the statute, and their exact meaning is in dispute. *It is for the Courts, not the Commission, ultimately to determine, as matter of law, what they include.*"

Also, in *United States v. United Verde Copper Co.*, 196 U. S. 207, 215, it was said: "The Secretary of the Interior attempts by it [*i.e.*, a regulation] to give an authoritative and final construction of the statute. This, we think, is beyond his power.

petitioner (pp. 13, 16) do not warrant a departure from this rule. Therein the point in controversy was not a dispute concerning the meaning of the terms of an Act of Congress, but was whether the facts fell within or without an accepted statutory meaning.[3]

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[3]In *Gray v. Powell*, 314 U. S. 402, the question presented was whether a railroad-consumer of coal was also a "producer" under the Bituminous Coal Act. If so, it was exempt from Code provisions fixing minimum and maximum prices. The Commission determined that the railroad was not a "producer." The opinion does not indicate any controversy over the meaning of the word "producer." The real controversy was whether the facts brought the railroad within the concept "producer." Thus, upholding the Commission's determination, it was said (p. 413):

> "Unless we can say that *a set of circumstances deemed by the Commission to bring them within the concept 'producer'* is so unrelated to the tasks entrusted by Congress to the Commission as in effect to deny a sensible exercise of judgment, it is the Court's duty to leave the Commission's judgment undisturbed."

In *Shields v. Utah Idaho Central R. Co.*, 305 U. S. 177, the question presented was whether respondent was an "interurban electric railway." If so, it was excepted from the operation of the Railway Labor Act. The Commission found that respondent was not an "interurban electric railway." The opinion does not indicate any dispute as to the meaning of the term "interurban electric railway." The controversy was whether the facts found by the Commission placed respondent in this category. Thus, upholding the Commission's determination, it was said (pp. 180, 181):

> "As Congress was free to establish the categories which should be excepted, Congress could bring to its aid an administrative agency *to determine the question of fact* whether a particular railroad fell within the exception, and Congress could make that factual determination, after hearing and upon evidence, conclusive.
>
> . . . . . .
>
> The Commission's determination was *one of fact*."

In *South Chicago Coal & Dock Co. v. Bassett*, 309 U. S. 251, the question presented was whether a deceased had been a member of the "crew" of a certain vessel, as that word was used in the Longshoremen's and Harbor Workers' Compensation Act. If so, deceased was excluded from the benefits of the Act. The deputy commissioner found that deceased was not a member of the "crew." Upholding such determination, consideration was first given (p. 258

Moreover, the word "employee" is descriptive of a *legal* relationship. The facts necessary to give rise to this relationship will depend upon *the legal definition* of the relationship. This differentiates the instant case from the cases cited by petitioner. "Producer" (*Gray* case), or

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et seq.) to the meaning of the word "crew." Concluding (p. 260) that it meant "employees on the vessel who are naturally and primarily on board to aid in her navigation," it was said (p. 260):

> "Regarding the word 'crew' in this statute as referring to the latter class, we think there was evidence to support the finding of the deputy commissioner."

Thus, the court first determined the true meaning of the language of Congress, and then turned to the facts found by the administrative officer to see whether they brought deceased within the purview of such meaning.

In *Rochester Telephone Corp. v. United States*, 307 U. S. 125, one of the questions presented was whether the Rochester Company was under the "control" of the New York Telephone Company. If so, it was subject to the Communications Act of 1934. The Commission determined that "control" existed. This determination was upheld, not by accepting an interpretation placed upon the word "control" by the administrative body, but by concluding that the facts found by the latter brought the Rochester Company within the meaning of this statutory language. Thus it was said (p. 144):

> "The justification for this finding clearly emerges from a rapid summary of the governing *facts adduced before the Commission* concerning the relationship between the New York and the Rochester."

In *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381, one of the questions presented was whether appellant was mining "bituminous coal." If so, he was subject to the Bituminous Coal Act. The Act contained a somewhat detailed definition of the term "bituminous coal," and the opinion does not indicate a controversy over the meaning of this term. The Commission determined that appellant's coal was "bituminous coal." The real controversy was whether the facts found by the Commission brought appellant's coal within the meaning of the statutory language. Thus, upholding the determination of the Commission, it was said (p. 400):

> "That guide is sufficiently precise for an intelligent *determination of the ultimate questions of fact* by experts.
>
> . . . . . .
>
> And it [*i. e.*, Congress] could delegate to that agency the *determination of the question of fact* whether a particular coal producer fell within the Act."

"interurban electric railway" (*Shields* case), or "crew" (*South Chicago* case), or "control" (*Rochester* case), or "bituminous coal" (*Sunshine* case) are matters whose existence or non-existence may be correctly determined by the factual inquiry of an administrative non-legal expert without scrutiny of legal precedents. Words of this character have no particular legal relationship background or connotation. "Employee," on the other hand, connoting as it does a legal relationship, can be found to exist only by first correctly determining the meaning of the word by resort to legal precedents.[4] Like "husband and wife," the existence or non-existence of this relationship cannot be correctly determined without resort to legal definition. As hereinafter pointed out, the legal definition of "employee" was evolved by judicial decision prior to the National Labor Relations Act, and must have been what Congress had in mind in using this word "employee."

Petitioner asserts (pp. 13, 14, 15) that *Walker v. Altmeyer*, — Fed. (2d) — (C. C. A. 2, July 12, 1943), conflicts with the opinion of the court below. It is submitted that no such conflict exists.

In the *Walker* case the error of the District Court was stated to be

> ". . . that of substituting new and contrary *inference* of its own *from the found facts* which led it to reverse the administrative conclusion which had been reached as to the employee status of the plaintiff."

---

[4]Cf. *United States v. Merriam*, 263 U. S. 179, 187, where it is said that the word "bequest" has a "*judicially settled* meaning."

There was no intimation in the *Walker* case that the court was *bound by a meaning* given by the administrative body to the terms of the Act.

Here the question presented is not whether the court might draw inferences from facts found by the administrative body contrary to inferences indulged by the latter. The question presented is whether the court *must adopt the meaning* given by the administrative body to the language of Congress.

The word "employee" in the National Labor Relations Act[5] delimits the authority and jurisdiction of the Board. To say that a reviewing court is bound by the meaning given to such word by the Board, would be to say that the Board may conclusively determine its own authority and thus conceivably expand the scope of that authority free from all judicial restraint.

In *Federal Trade Comm. v. Raladam Co.*, 283 U. S. 643, 654, affirming the reversal of a cease and desist order issued by the Commission, it was pointed out that

> ". . . one of the facts necessary to support jurisdiction to make the final order to cease and desist, is the existence of *competition;* and the commission cannot, by assuming the existence of competition, if in fact there be none, give itself jurisdiction to make such an order."

---

[5]The instant case arose out of a complaint issued by the Board on December 5, 1941 [R. 357] charging respondent with unfair labor practices in violation of Sec. 8 (1) and (5) of the Act. These provisions of the Act (U.S.C.A., Title 29, sec. 158) read:

> "Sec. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce *employees* in the exercise of the rights guaranteed in section 7;
>
> . . . . . .
>
> (5) To refuse to bargain collectively with the representatives of his *employees*, subject to the provisions of section 9 (a)."

Similarly, in the instant case the existence of an *employee-relationship* was a prerequisite to jurisdiction, and the Board could not, by assuming the existence of such relationship on the basis of its own faulty interpretation of the Act, give itself jurisdiction to make the order here in controversy.

2. The Court Below Properly Held That the Word "Employee" as Used in the Act Must Be Given Its Conventional Meaning.

The court below declared [R. 1848]: "Since the term 'employee' is not defined in the Act, we agree with petitioners' [herein respondents'] contention that it must be given its *conventional meaning as developed under the common law and statutory enactments.*"

The Board in the court below contended for a different meaning, viz., that "where the persons involved *function in a realistic economic sense as employees* of an industrial enterprise Congress intended them to be within the Act." [R. 1847.]

Thus petitioner asked the court below to give to the word "employee," used by Congress, a meaning which would vary according to the dicta of economic soothsayers, and therefore unpredictably vary from case to case.

Suppose this speculative and variable meaning were adopted for the word "employee" used by Congress. Unquestionably that word was a standard set by Congress to mark the limits of the Board's jurisdiction. What happens to an Act in which the standard set for the guidance and limitation of an administrative authority is uncertain? Unquestionably the Act becomes unconstitu-

tional.[6] Otherwise, the administrative authority would be endowed with those legislative powers which may only be exercised by Congress. Since an interpretation which would render a statute constitutional will be preferred to one which would render it unconstitutional,[7] the interpretation of the word "employee" contended for by petitioner should be discarded, as it was discarded by the court below. [R. 1848.]

The word "employee" should be given the meaning adopted by the court below, *i. e.*, "its conventional meaning as developed under the common law and statutory enactments." [R. 1848.] In placing this interpretation on the word "employee," the court below acted in accord with applicable decisions of this court. This is the meaning given the word "employee" under the Federal Employers' Liability Act by this Court.[8] It is also the meaning given the word "employee" under the Social Security Act by the lower Federal courts.[9]

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[6] *Panama Refining Co. v. Ryan*, 293 U. S. 388, 420; *Schechter Poultry Corp. v. United States*, 295 U. S. 495.

[7] *United States v. Delaware & Hudson Co.*, 213 U. S. 366, 407; *Knights Templars' Indemnity Co. v. Jarman*, 187 U. S. 197, 205.

[8] In *Robinson v. Baltimore & Ohio R. R. Co.*, 237 U. S. 84, 94, where it became necessary to determine the meaning of the word "employe" under the Federal Employers' Liability Act, it was said:

> "We are of the opinion that Congress used the words 'employe' and 'employed' in the statute in their natural sense, *and intended to describe the conventional relation of employer and employe.*"

Accord: *Hull v. Philadelphia & Reading Ry. Co.*, 252 U. S. 475, 479.

Of course, Congress will be presumed to have used a word in its "known and ordinary signification." *Levy's Lessee v. McCartee*, 6 Pet. 102, 110; *Old Colony R. Co. v. Commissioner of Int. Rev.*, 284 U. S. 552, 560; "in its usual and well-settled sense." *United States v. Stewart*, 311 U. S. 60, 63.

[9] See cases cited in the opinion below. [R. 1848, 1849.]

There is nothing in *National Labor Relations Board v. Blount*, 131 Fed. (2d) 585 (C. C. A. 8), cited by petitioner (pp. 18, 19), in conflict with the decision of the court below in holding that the word "employee" must be given "its conventional meaning as developed under the common law and statutory enactments." In the *Blount* case the majority opinion devoted considerable space to an examination of the statutes of Missouri and Missouri decisions to determine whether the tiff miners there involved had been regarded as employees, concluding that they had not. Obviously no such inquiry would have been relevant, if, as the Board contends in our case, the true meaning of the word "employee" is not (1) "its conventional meaning as developed under the common law and statutory enactments," but is (2) whether the individuals involved "function in a realistic economic sense as employees."

3. The Court Below Properly Held That There Was No Substantial Evidence That the Newsboys Were "Employees" in the Conventional Sense.

There can be no doubt that newsboys selling newspapers under the conditions disclosed by our record were not "employees" according to a well settled line of decisions going back to a date prior to the National Labor Relations Act.

New York Indemnity Co. v. Industrial Accident Comm., 213 Cal. 43, 1 Pac. (2d) 12;

Birmingham Post Co. v. Sturgeon, 227 Ala. 162, 149 So. 74;

Creswell v. Charlotte News Publ. Co., 204 N. C. 380, 168 S. E. 408;

Bernat v. Star-Chronicle Publ. Co. (Mo. App.), 84 S. W. (2d) 429;

Balinski v. Press Publ. Co., 118 Pa. Sup. 89, 179 Atl. 897.

Petitioner intimates (p. 24, and footnote 16) that there is diversity of judicial opinion concerning the status of newsboys under these conditions, and asks the Court to compare the cases we have cited with certain other cases involving newspaper publishers. The latter are not in point,[10] and in no wise weaken respondent's position: that by the settled course of judicial decision newsboys operating under the conditions disclosed by our record are not "employees."

It is true that the cases we have cited arose under state workmen's compensation laws. However, these laws made no more attempt to define the word "employee" than did the National Labor Relations Act, and their beneficent policy presumably forbade any narrow construction of that relationship.

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[10]In *Salt Lake Tribune Pub. Co. v. Industrial Comm.*: 99 Utah 259, 102 Pac. (2d) 307, a *carrier*, not a newsboy, was involved. Such carrier, under the close supervision of a district manager, was required to deliver newspapers to subscribers, make collections and obtain new subscribers. Carriers were required to attend occasional meetings and keep a route card for each customer (to be returned to the company). Subscribers were customers of the company, not customers of the carrier.

In *Pacific Employers Ins. Co. v. Industrial Accident Comm.*, 3 Cal. (2d) 759, 47 Pac. (2d) 270, the "newsboy" involved was paid a bonus to compensate him for being on a designated corner at certain specified hours to handle the company's newspaper exclusively.

In re Scatola, 282 N. Y. 689, 26 N. E. (2d) 815, involved a *route carrier* who delivered the publication to persons who had contracted with the company to subscribe therefor. Copies not thus used could not be sold on the streets. This memorandum opinion affirms 257 App. Div. 471, 14 N. Y. S. (2d) 55, 56, where it is

Under the cases we have cited, the evidence before the Board excluded the newsboys from the category of "employees." The newsboys purchased their merchandise at a wholesale price and derived their entire profit from their retail sales at a higher price, the volume of such profit being dependent upon their success in conducting such retail sales. [R. 92, 1566.] Methods to be used in attracting customers were determined by the newsboy. [R. 1413.] The question whether credit should be extended to customers was determined solely by the newsboy. [R. 1416, 1417.] The newsboy, on occasion, hired others to assist him and made a profit in so doing. [R. 1488, 1489, 1492.] The right to sell competing publications at the same time was frequently exercised [R. 106, 1448], and of course no allocation of time spent as between the competing publications could be made. The right to cooperate with other newsboys selling competing

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said: "The relation between this carrier and publisher differs from that of a newsboy who purchases papers and sells them on the street corner through crying his wares."

In *Wilson v. Times Printing Co.*, 158 Wash. 95, 290 Pac. 691, a *rural route carrier*, not a newsboy, was involved. A part of his earnings were in the form of a fixed monthly salary. Deliveries and collections by the carrier were under the close supervision of a company representative, and collections were receipted for on a form which stated that payment was being received "for the company."

The decision in *Hampton v. Macon News Printing Co.*, 64 Ga. App. 150, 12 S. E. (2d) 425, involved a *route carrier* who, under the supervision of a substation or district manager, delivered the newspaper to a list of the company's subscribers. When the carrier failed to collect from any of the latter, the company billed the subscriber as the company's debtor. (The weight to be given this decision was subsequently questioned in *Macon News Printing Co. v. Hampton*, 192 Ga. 623, 15 S. E. (2d) 793.)

Gallaher v. Ricketts, 187 So. 351 (La.), annulled 191 So. 713, likewise involved a *route carrier*, who had no interest in the route, and who delivered newspapers to the company's customers under "special instructions respecting the methods to be used . . ."

publications was exercised by the newsboys for their mutual benefit. [R. 1417, 1418, 1419, 1449, 1612, 1613, 1617, 1923.] Other factors emphasizing the absence of any employee relationship are pointed out in the opinion of the court below. [R. 1850, 1851.] The newsboys were known to respondent only as sales outlets, and they occupied a position no different from that occupied by various other retail sellers of the newspaper, such as drug stores, cigar stands, and newsstands.

Undoubtedly, in determining whether the status of the newsboys was that of employees, the question of control or lack of control over the newsboys was a matter of importance. However, a certain measure of control may exist without any employee status resulting. The control which produces an employee status must be a control of the means and methods of performance.[11] Furthermore, the control which produces an employee status must be a complete control.[12] Moreover, "mere suggestion as to details or the necessary cooperation,

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[11] *Fidelity & Casualty Co. v. Industrial Acc. Comm.*, 191 Cal. 404, 407; 216 Pac. 578, 579;
Lenkuhl v. Clark, 209 Minn. 276; 296 N. W. 28, 29.

[12] *Western Indemnity Co. v. Pillsbury*, 172 Cal. 807, 811;
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where the work furnished is part of a larger undertaking," does not establish such control as to indicate an employee status.[13] No substantial evidence[14] before the Board pointed to any such control by respondent over the operations of the newsboys.

Conclusion.

The decision of the Circuit Court of Appeals is correct, and presents no conflict of decisions or unsettled question of federal law or departure from the accepted and usual course of judicial proceedings. The Board's petition for a writ of certiorari should be denied.

Respectfully submitted,

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September, 1943.

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[13] *Standard Oil Co. v. Anderson*, 212 U. S. 215, 222.

[14] "*Substantial* evidence" to support the Board's findings was requisite. *Consol. Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 229. To be "substantial," evidence must afford "a substantial basis of fact" and be "more than a scintilla" and "do more than create a suspicion of the existence of the fact to be established." *National Labor Relations Board v. Columbian Enameling & Stamping Co.*, 306 U. S. 292, 299.

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IN THE

Supreme Court of the United States

October Term, 1943.

No. 336.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

HEARST PUBLICATIONS, INCORPORATED,

Respondent.

BRIEF OF RESPONDENT, HEARST PUBLICATIONS, INCORPORATED.

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IN THE

Supreme Court of the United States

October Term, 1943.

No. 336.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

HEARST PUBLICATIONS, INCORPORATED,

Respondent.

BRIEF OF RESPONDENT, HEARST PUBLICATIONS, INCORPORATED.

Respondent, Hearst Publications, Incorporated, publisher of the "Los Angeles Examiner," presents the following brief in support of the affirmance of the decree of the Circuit Court of Appeals [R. 1852, 1853].[1]

Opinion Below.

The opinion of the Circuit Court of Appeals for the Ninth Circuit is reported in 136 Fed. (2d) 608 [R. 1843 *et seq.*].

Jurisdiction.

The Board's petition for writ of certiorari, filed on September 9, 1943, was granted on October 25, 1943. Jurisdiction of the Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C. A. sec. 151 *et seq.*), herein called "the Act".

[1]Herein references to pages of the record are designated: R. Italics throughout this brief have been supplied.

Statement of the Case.

The decree [R. 1852, 1853] of the Circuit Court of Appeals here under review denied enforcement of and set aside an order of the National Labor Relations Board [R. 455; 39 N. L. R. B. 1256]. Such order had directed that this respondent cease and desist from its refusal to bargain collectively with a newsboys union as the exclusive bargaining representative of newsboys engaged in street sales of respondent's newspaper, the "Los Angeles Examiner" [R. 476]. Such order had been made by the Board on March 30, 1942 in a complaint proceeding, and the latter had been preceded by a representation proceeding wherein the Board on January 9, 1941 had concluded [R. 108] that such newsboys were respondent's employees under the Act, and had determined [R. 119] upon the unit of such newsboys appropriate for collective bargaining under the Act.

The record discloses the following with respect to respondent's organization for the wholesale distribution of its newspaper, and the operations of the newsboys.

Respondent's Organization for Wholesale Distribution.

The "Los Angeles Examiner"[2] was distributed throughout California, "but principally in the metropolitan area

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[2]It was stipulated [Bd. Ex. 18] that the publication and distribution of this newspaper was a "separate business enterprise wholly owned by Hearst Publications, Incorporated," which owned other newspapers and publishing subsidiaries, but that none of the latter had "any connection or relation with either the manufacture, publication, sale or distribution of" the "Los Angeles Examiner" [R. 69, 70, 71, 72]. It should be understood that references herein to activities of "this respondent" are to that department of Hearst Publications, Incorporated, which conducts the publication and distribution of the "Los Angeles Examiner."

of Los Angeles" [R. 73], and 2% of its daily and 8% of its Sunday issues were distributed outside of California [R. 74].[3] Within California home deliveries and newsstand sales accounted for about 80%, and sales by all newsboys for about 20% of the total [R. 1560, 1561], but sales by newsboys coming within the definition of "newsboy" adopted by the Board [R. 112, 113, 114] would account for considerably less than 20% of California sales [R. 1562].

The daily and Sunday editions [R. 69] of the "Los Angeles Examiner" were distributed to newsboys, to newsstands, to independent dealers, to district headquarters for home delivery, and to trains and busses for outlying points [R. 1353]. Under the newspaper's circulation director, Mr. Black [R. 668, 1354], and the circulation manager, Mr. Weisbecker [R. 1349], were three departments: the night street department under Mr. Hampson; the morning street department; and the suburban and country department [R. 1355], the latter handling in the main territory outside the City [R. 1356].[4] The morning street department included the "A. M. independent dealers," the "10-mile independent dealers," and "the downtown street sales" under Mr. Seebolt [R. 1355, 1356]. The "A. M. independent dealers" and the "10-mile independent dealers" were "strictly independent dealers" [R. 1360] and there was no testimony disclosing their operations.

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[3]Of its *combined* daily and Sunday average circulation of 263,848 copies, only 9,909 copies, or 4%, were sold or distributed outside of California [R. 74].

[4]It was stipulated that the newsboys in this area were not involved in this proceeding [R. 1359, 1360].

Messrs. Weisbecker [R. 1349, 1555], Hampson [R. 1362, 1567], and Seebolt [R. 1373] appeared as witnesses.

Under Mr. Hampson (night street department) there were 15 regular district men [R. 1364], who were paid employees of the newspaper. Four of these district men, Mr. Volanty [R. 1514], Mr. Navarro [R. 1432], Mr. Jackson [R. 1442], and Mr. Pierce [R. 1529], appeared as witnesses. There were no district men under Mr. Seebolt (morning downtown street sales) [R. 1375].

So far as this respondent is concerned the only newsboys dealt with by the Board were newsboys within the Board's definition of appropriate unit[5] to whom sales of newspapers were made by the night district men (under Mr. Hampson), and by Mr. Seebolt, who was in charge of morning downtown street sales.

Neither this respondent nor any of its representatives had any list of the names of the newsboys to whom its

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[5]The Board's decision and direction of elections of January 9, 1941 [R. 77] found the following unit to be appropriate as to this respondent [R. 112]:

> ". . . all newsboys engaged in the street sale of the . . . Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys"

and the terms "established spot" and "temporary newsboy" were defined as follows [R. 113, 114]:

> ". . . the term 'established spot' . . . refers to a place where a newsboy has engaged in the street sale of the . . . Examiner . . . 5 or more days a week for a period of 6 consecutive months or more, and the term 'temporary' newsboy . . . includes a newsboy who has engaged in the street sale of the . . . Examiner . . . at an established spot for 30 days or less."

newspapers were sold by the night district men and by Mr. Seebolt [R. 1349, 1402, 1403]. Sometimes the company's district men knew the newsboys only by their first names or nicknames.[6] Moreover, the number of newsboys to whom a district man would sell newspapers would vary from night to night, "according to how many show up" [R. 1521] and there were "plenty" of newsboys who handled respondent's newspaper for only one or two nights a week [R. 1573], while some newsboys handled only the Sunday editions [R. 1385, 1386]. Some newsboys within the Board's "appropriate unit" worked at other jobs during the period they were selling respondent's newspapers.[7]

Night Street Sales.

Each of the night district men called at the newspaper plant for a quantity of newspapers, determined by himself [R. 1365], at about 6 o'clock in the evening [R. 1363]. Each called again at the plant before 2 o'clock the following morning to pay for the papers received the evening before or return unsold papers [R. 1363, 1364, 1434]. In the territory covered by these night district men there were

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[6]Thus, night district man Navarro did not know the last names of the "main spot" boys at Pico and Vermont Avenue, and at Washington and Vermont Avenue in his area [R. 1438]. Thus, night district man Pierce knew newsboy Celestino Sanchez only as "Solly" [R. 1533, 1534, 1545, 1546].

[7]Newsboy Barrett testified that he was a carpenter by trade and sometimes "took an odd job in the daytime" [R. 1425].

Newsboy Sanchez testified that while he was selling respondent's newspaper at the Southern Pacific depot he was operating a bootblack stand [R. 1488].

about 500 newsboys[8] [R. 1565, 1566]. Each of these newsboys received delivery of quantities of newspapers from a night district man, paying therefor a wholesale price,[9] and resold such newspapers to the public at the resale price[10] established by the newspaper. Thus the money made by these newsboys was the difference between what they paid for the papers and the price at which they sold them [R. 92, 1531, 1566].

None of these newsboys received any wages, bonus or other compensation from the newspaper [R. 1557].[11] These newsboys were not instructed that they were not to sell newspapers, other than the "Los Angeles Examiner," or magazines [R. 1531, 1566].

These newsboys were not required to report at the newspaper plant, but if they did go there and request transpor-

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[8]In addition to these there were "plenty" of newsboys who handled the paper for only one or two nights a week [R. 1573]. The number of newsboys serviced by a district man would vary from night to night "according to how many show up" [R. 1521].

[9]This was 3¢ per copy for a certain number of daily editions and 1½¢ per copy for quantities in excess of such number [R. 1365, 1570]. For Sunday editions the wholesale price was 8¢ per copy [R. 1391].

[10]This was 5¢ per copy for daily editions; 10¢ per copy for Sunday editions.

[11]The night district men received "strict instructions" not to pay money to newsboys [R. 1571]. Night district man Navarro violated these instructions by giving his "main spot" boys "a few nickels . . . a little extra money" for giving the "off spot" boys their supplies of papers [R. 1437, 1438]. Night district men, Volanty [R. 1519] and Pierce [R. 1531], on the other hand, testified positively that they did not give money to newsboys.

tation to the places where they were to sell their papers, such transportation was provided [R. 1566].[12]

These newsboys were not told to use change aprons [see R. 1369 for an illustration of one of these aprons], but in cases where they requested it they were given such aprons [R. 1567]. They were not told to wear caps or any particular kind of article of apparel.[13]

Sometimes the night district men were furnished with advertising "placards" similar to Bd. Ex. 7 [R. 755, 1366, 1371] and maps advertising the newspaper [R. 1366] mounted on cardboard [R. 1590, 1609].[14]

Morning Street Sales.

Mr. Seebolt, in charge of morning downtown street sales, distributed papers to 58 or 60 newsboys [R. 1380]. On week-days he usually left the plant about 4:45 A. M. [R. 1374] to make his first round, later "re-covering" the

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[12]This privilege seems to have been availed of by comparatively few newsboys. Thus, night district man Volanty testified that while he supplied papers to about 35 newsboys [R. 1521] never more than one or two newsboys would ride out with him; sometimes none would do so [R. 1524]; that he never told those who did ride with him that they had to do so [R. 1526]. Night district man Pierce testified that he never took anyone in his car [R. 1532].

[13]Mr. Hampson testified that upon occasion the newsboys wore caps or other articles of apparel advertising the products of someone other than the "Los Angeles Examiner" [R. 1571, 1572].

[14]The only testimony as to what was done with these advertising materials came from night district man Pierce, who testified that he put them up himself [R. 1537, 1547], and from newsboys Sanchez, Nation and Nixon, who testified that they themselves put up advertising maps left with them by Pierce [R. 1485, 1486, 1580, 1607].

locations in his area a second and third time [R. 1374]. On Sundays he left the plant at 3 A. M. [R. 1385].. Mr. Seebolt did not transport any newsboys to their selling locations [R. 1390]; did not handle any placards or maps or tell the newsboys they should display these [R. 1391; 1392]; never handed out change aprons,[15] unless a newsboy himself requested one, in which case Seebolt would tell him he would try and get him one [R. 1391]; and for two years had not handled any news racks or boxes [R. 1391].

None of the newsboys purchasing from Mr. Seebolt received any wages, bonus, or other compensation from the newspaper.[16]

Newsboys' Sales Territory.

Before taking up a location, a newsboy would usually make inquiry of the district man for the purpose of ascertaining whether newspapers would be sold and delivered to

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[15]Mr. Seebolt testified that newsboys in his territory would wear change aprons with some name on the apron other than "Los Angeles Examiner" [R. 1391]. Confirmation of this occurred at the hearing before the Trial Examiner, when Examiner newsboy Johnson took the witness stand wearing a "Herald" apron [R. 1618].

[16]Mr. Seebolt had an arrangement with two men, known to him as "Marsh" and "Harry," whereby Seebolt paid these men *out of his own pocket* to count out newspapers at Seventh and Grand and Second and Spring Streets, respectively [R. 1379, 1380, 1398]. "Marsh" sold the Times, Daily News and Examiner at Seventh and Grand, while "Harry" sold the Times and Examiner at Fifth and Hill Streets" [R. 1387, 1388].

him at such location.[17] The newsboys themselves realized the wisdom of avoiding conflict by encroachment upon territory already preempted by others.[18]

At a given street intersection where newsboys sold papers, the "best" corner would often be referred to as a *"main spot"* and other corners or locations as *"off spots"* [R. 1437]. A newsboy selling papers to automobiles in traffic or at safety zones would be said to be selling at a *"traffic spot"* [R. 1435].

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[17]Thus, newsboy Sanchez, learning that Fifth and Main Streets was "open," went to Pierce, night district man, and said he would like to have it. Pierce did not tell him he could sell there, but did tell him "how many papers the corner would sell" [R. 1547]. So a newsboy, learning that another newsboy selling at Beverly and Western Avenue had quit that location, came to night district man Volanty and asked the latter if he could have that spot. Volanty replied that he didn't see any reason why he shouldn't have it and told him how many papers the corner ordinarily sold [R. 1526]. There was similar testimony by night district man Navarro [R. 1436, 1437]. Night district man Jackson testified, ". . . I don't put any newsboys on any corner. If I have a spot open, if a fellow asks me if I have anything open, I will tell him where it is, and I sell the newspapers to him and he goes out there himself" [R. 1442].

[18]In the opinion of the court below it is said: "Since the place of business of a newsboy is a public street or sidewalk, neither the publisher nor the boy has any proprietary right to any 'corner' or locality. The fact that the newsboys do not encroach on one another's territorial jurisdiction is principally a result of a tacit understanding between them based in large measure, it would seem, upon the old law of prior possession and ability to defend a squatter's privilege" [R. 1851].

Sales of Territory by One Newsboy to Another.

The record discloses a number of instances of a sale of a corner by one newsboy to another newsboy.[19] These sales were not engineered or promoted by the newspaper. They were transactions between the newsboys themselves.

Hours During Which Newspapers Were Sold.

Street sales of the daily newspaper by newsboys commenced after 6 P. M. in the evening, and continued until some hour before or after midnight [R. 1434], being resumed in the morning at about 5 A. M. [R. 1374] and continuing not later than 10:30 A. M. [R. 1397]. Sales of the Sunday paper commenced about 3 P. M. on Saturday afternoon [R. 1608], and the last edition came out at 3 A. M. Sunday morning [R. 1385].

The newsboys were advised or knew when and where delivery of the first edition would be made to them, and

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[19]Newsboy Relish, who sold the Examiner as well as the Herald and various magazines, testified that he bought his corner from newsboy Soel for $100 [R. 736]. Newsboy Bryant, who sold the Herald and News and sometimes the Examiner and Times, as well as magazines, testified that he purchased one corner from newsboy Faber for $600 and sold another corner to Faber for $250 [R. 922, 923]. Newsboy Schullman, one time treasurer of the Union, testified that he purchased his corner from newsboy Levinson by weekly payments to the latter aggregating about $1200 [R. 930, 931]. Newsboy Gallagher testified that he bought his corner from a newsboy for about $300 [R. 939]. Newsboy Newman testified that he purchased his corner from another newsboy for about $250 [R. 945]. Mr. Comorre, the Union organizer, testified concerning the purchase of a corner by his brother-in-law, newsboy Powers, for $150 [R. 999, 1000, 1001, 1002].

they were usually there to receive such delivery.[20] Subsequent editions when available were delivered to them [R. 1374, 1433, 1434, 1519, 1520, 1544]. As already pointed out, the newsboys were not required to accept transportation to or from the locations where their sales were conducted [R. 1390, 1524, 1526, 1532, 1566].

When the newsboys had sold all they felt like selling they stopped and went to the publisher's representative to make payment for what they had sold. In the case of night sales, this was any time between 11 P. M. and 1:30 A. M.[21] In the case of morning sales, this was between 9:30 A. M. and 10:30 A. M.[22]

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[20]Mr. Seebolt, in charge of morning downtown street sales, was asked if he instructed newsboys to "show up at a given corner or place to receive their papers." He testified that if a newsboy asked him when papers were to be dumped at a certain corner or location, he would tell him in advance, but that aside from this he did not issue instructions to newsboys that they "must show up at a given spot to receive their papers at a given time" [R. 1394, 1395]; that most of the newsboys "have all known for years down there, just the same as I know, when to come down" [R. 1397].

[21]Night district man Navarro testified: "Q. Do you make your collections each night from the newsboys . . . ? A. I do. Q. And during what hours do you make those collections? A. *When they are ready to quit and go home.* Q. And during what hours is that? A. Well, they vary. Some of them quit at 11:00 o'clock, 12:00 o'clock, 1:00 o'clock, 12:30, 1:30" [R. 1434].

Newsboy Buhl testified that he "checked in" at 1 a. m. [R. 1623], while newsboys Deering and Sanchez, selling in the same district as Buhl, testified that they "checked in" at 12:30 a. m. [R. 1502] and at 1:30 a. m. [R. 1487], respectively.

[22]Mr. Seebolt, in charge of morning downtown street sales, testified that some of the newsboys "started" to "check in" at 9:30 or 9:45 a. m., but that he himself was "there" until 10:30 a. m. [R. 1397].

Methods Used by Newsboys in Attracting Customers.

Methods to be used in attracting customers were determined by the newsboys themselves.[23] There was no evidence that the newsboys selling this respondent's newspaper were ever instructed how they should "call" or display their papers to prospective customers.

The Newsboys' Profit.

The newsboys purchased their newspapers at a wholesale price and derived their entire profit from their retail sales at a higher price.[24] The volume of such profit was of course dependent on their success in conducting such retail sales. The company did not curtail the quantity of merchandise which they could purchase. They accepted delivery of a certain quantity of newspapers. If they

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[23]Mr. Seebolt, who was in charge of morning downtown street sales, testified that "some newsboys call their papers and some don't call them very much"; that he did not issue instructions to the newsboys as to how they shall call their papers; that he left it entirely up to the newsboys as to "whether they shall call the papers at all or not" [R. 1392, 1393].

Newsboy Seklemian testified that he did what he believed to be best to dispose of his newspapers; that he did whatever he thought "works . . . in order to sell" his papers [R. 1413].

There was no evidence that any newsboy selling this respondent's newspaper was ever instructed how he should carry or display the paper or that he should give it preferential display over some other newspaper he carried for sale.

[24]This was the Board's finding [R. 92].

wanted more they could have them.[25] If they did not sell all they had taken, they could return the unsold copies [R. 91]. Respondent had no "checkmen," if by that term is meant newsboys who received money or checks from the company for services performed.[26]

Credit Extended by Newsboys to Their Customers.

The question whether credit should be extended to customers was determined solely by the newsboys themselves.[27] Each day they were required to pay the publisher for all papers received less papers unsold and returned to the publisher's representative [R. 1384, 1434, 1527]. The Board found that "the newsboys absorb losses resulting from poor credit risks" [R. 110].

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[25]Mr. Seebolt, who was in charge of morning downtown street sales, testified that if a newsboy requested more papers then were handed him, such request was as a matter of practice complied with [R. 1393].

While newsboy Nixon testified that he did not determine the number of papers he received [R. 1606], he also testified that he never complained to the district man about not getting enough papers [R. 1609]. Newsboy Buhl testified to the same effect [R. 1624].

[26]At the hearing before the Trial Examiner the Board's attorney stated that he understood that "checkmen" designated men "who received checks from the various papers" [R. 587]. The Union's organizer had the same understanding [R. 854]. The Board's findings defined "checkmen" in the same way, stating that: "For his services in redistributing newspapers the checkman receives a small salary from the publisher. He is carried on the publisher's payroll" [R. 90]. *This respondent had no newsboys in this category* [R. 1557].

[27]Newsboy Seklemian testified that he had about 43 "regular customers"; that sometimes he would extend several days' credit to certain of these customers [R. 1416, 1417].

Sales of Other Publications by Newsboys.

As a general practice the newsboys sold more than one newspaper and handled magazines.[28] Of course there could be no allocation of the time spent in selling these several publications.

Employment of Assistants by a Newsboy.

The Board found that "some newsboys occasionally hire others to sell newspapers on a commission, or straight stipend basis" [R. 110, footnote]. The testimony discloses instances in which a newsboy hired others to assist him, and made a profit by so doing.[29]

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[28]This was the Board's finding [R. 106; see also R. 110].

[29]Newsboy Sanchez testified that while selling the "Los Angeles Examiner" at the Southern Pacific depot he was operating a boot-black stand; that he had "some boys working for" him at that location "selling Examiners"; that he took care of the compensation of these boys [R. 1488, 1489]; and that he made a profit on the papers they sold [R. 1492].

Newsboy Schullman, one time treasurer of the Union, a Herald and News newsboy, who also handled a few Examiners as well as magazines [R. 932], testified that he employed 5 newsboys to assist him, paying them according to their sales of newspapers he bought and turned over to them, and that he made a profit on these activities [R. 931, 932, 937].

Newsboy Gallagher, who handled the Herald, News, Examiner, Times and other publications and magazines, employed 5 newsboys on the same basis as newsboy Schullman [R. 939, 940].

Newsboy Newman testified that he employed three boys as his assistants on salary and commission [R. 946].

Newsboy Klein, first president of the Union, who handled the Herald, News, Times and Examiner, employed two assistants, one of whom covered the corner at 30¢ per hour paid by Klein, and one of whom sold newspapers in traffic at 35¢ per hour paid by Klein [R. 982].

Cooperation Between Newsboys Selling Competing Publications.

The newsboys exercised the right to cooperate with other newsboys selling competing publications for their mutual benefit.[30]

Summary of Argument.

The argument which follows will be presented under the following points:

I. The newsboys engaged in selling this respondent's newspaper were not "employees" under the National Labor Relations Act.

(1) Unless the newsboys were "employees," respondent could not have been guilty of an "unfair labor practice."

(2) The meaning of the word "employee" in the Act is a legal question for the determination of the Court.

(3) The word "employee" used in the Act must be given its judicially settled meaning.

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[30] Newsboy Seklemian testified that on his corner, by arrangement with the Times newsboy, he handled "the Times for the Times fellow . . . as a courtesy to the public as well as to my fellow worker," and that as a result of this arrangement the Times newsboy did the same for him; that this arrangement included also the Herald newsboy. [R. 1417, 1418].

Newsboy Nixon testified that he would sell the News for the News newsboy when the latter was absent, and that the News newsboy did the same for him when he was away; that when the News newsboy quit for the night he gave Nixon two copies of the News, which Nixon could sell, retaining the full selling price [R. 1612, 1613].

Newsboy Johnson testified that he handled the Times, the Herald and the News as an accommodation to the other newsboys selling these newspapers, making the "regular profit" on these sales [R. 1617].

(4) Unless the word "employee" as used in the Act be given its judicially settled meaning, the Act is unconstitutional.

(5) According to its judicially settled meaning the word "employee" connotes one who performs services under conditions which give the one for whom the services are performed power of complete control and direction, not only as to the result to be attained, but over the details and means by which that result is accomplished.

(6) The basic findings of the Board do not support the conclusion that the newsboys were employees of this respondent.

(A) Certain basic findings of the Board do not support the conclusion that employment existed, for under the settled course of judicial decision determining when employment arises, such findings even if supported would not tend to show an employee status.

(B) The remaining basic findings of the Board do not support the Board's conclusion that the newsboys were employees of this respondent, for there was no substantial evidence showing that such findings were true as to this respondent.

II. The bargaining unit designated by the Board was not an "appropriate" unit.

(1) Unless the unit designated by the Board was "appropriate" for collective bargaining, respondent could not have been guilty of an "unfair labor practice."

(2) The Board's designation of a bargaining unit was not supported by findings showing it to be an appropriate unit.

ARGUMENT.

I.

The Newsboys Engaged in Selling This Respondent's Newspaper Were Not "Employees" Under the National Labor Relations Act.

(1) Unless the newsboys were "employees," respondent could not have been guilty of an "unfair labor practice."

The Board concluded [R. 475] that this respondent had engaged in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act. But unless the newsboys in question were this respondent's "employees" and this respondent was their "employer," no "unfair labor practice" occurred, and the Board was without authority to proceed under Section 10 of the Act. This is made clear by the terms of the Act.[31]

(2) The Meaning of the Word "Employee" in the Act Is a Legal Question for the Determination of the Court.

Before considering whether the Board's findings support its conclusion that the newsboys were "employees" it is necessary to know the *meaning* of the word "employee" as used in the Act. Until we know what the statu-

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[31]This section reads:

"Sec. 8. It shall be an unfair labor practice for an *employer*—(1) To interfere with, restrain, or coerce *employees* in the exercise of the rights guaranteed in section 7.

* * * * * * * * * *

(5) To refuse to bargain collectively with the representatives of his *employees*, subject to the provisions of section 9 (a)."

Section 7 referred to in Section 8 (1) reads:

"Sec. 7. *Employees* shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

tory standard ("employee") means, we cannot say whether the facts fall within or without such standard.

Is a determination of the *meaning* of this term "employee" a judicial or an administrative function, is this a question of law for the Court, or a question of fact for the administrative body?

We contend that this is a question of law to be determined by the Court; that it is for the Court to resolve conflicting contentions as to the meaning of the term "employee," and thereupon consider whether such administrative fact findings as are supported by substantial evidence bring the case within such meaning.

Counsel for the Board contend[32] that the *entire matter* should be left to the determination of the administrative body. Thus, counsel say that in a case of this character "*the question as to whether particular facts brought a person within statutory language was a matter of judgment on which the decision of the administrative official was to be accepted if supported by evidence in the record* . . ." (petition for certiorari, p. 16). This is another way of saying that the Court should accept (a) the conclusion of counsel for the Board as to the meaning of the statutory standard ("employee"), even though that meaning be disputed, and (b) the conclusion of the Board that the facts fall within such statutory standard. Thus, counsel would give administrative finality, not only to administrative fact findings if supported by substantial evidence, but also to an assumed administrative construction of statutory language.

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[32]Citing *Gray v. Powell*, 314 U. S. 402 (1941), and other cases.

Two theories to rationalize the demarcation between fact and law in judicial review have been expounded.

There is the theory of Dean Landis that questions which call for solution by a trained body of non-legal experts should be classified as questions of fact and relegated to the administrative field; that questions which lawyers are equipped to decide should be placed in the legal field.[33]

There is the theory of Professor Brown that where further clarification of the meaning of the statutory standard is impossible or unnecessary, the matter will be classified as a question of fact and left to the administrative agency, but that where clarification of meaning is desirable in the interests of uniformity in the decision of future cases, a question of law is presented for judicial determination.[34]

In the instant case, an application of either of these theories will have the same result: the meaning of the word "employee" in the Act will be declared to be a legal question for the determination of the Court.

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[33]Landis, "The Administrative Process," 152 (1938).

[34]"When a court, in reviewing administrative action, sees in the impingement of the statutory norm upon the facts of the case the desirability of making a decision that will govern not only the immediate case but also a considerable body of future cases, it will assume jurisdiction of the question and resolve it by interpreting or defining the statute so as to meet the particular facts presented. If, however, the legal norm is incapable of further clarification, or if the facts of the individual case are so unique as to be incapable of generalized application, then the court perforce has no question of law available for its consideration and the determination of the matter must be left to the fact-finding agency."

Brown, *"Fact and Law in Judicial Review,"* 56 Harvard Law Rev. 899, 905 (1943).

Under the Landis theory, the meaning of "employee" cannot possibly be said to raise a question for a non-legal expert. The word itself has a peculiarly legal background and content. Its meaning presents a question "of an essentially legal nature in the sense that legal education and lawyers' learning afford peculiar competence for [its] adjustment."[35] So in our case the Court, resorting to familiar legal rules, should determine for itself the meaning of "employee."

Under the Brown theory, the meaning of "employee" is a question of law for the Court and not a question of fact for final determination by the administrative body. Certainly clarification of the meaning of this term is both possible and desirable, and may be given generalized application in future cases. Congress intended that "em-

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[35]Quoted from the concurring opinion of Mr. Justice Frankfurter in *Driscoll v. Edison Light & Power Co.*, 307 U. S. 104, 122 (1939).

In *Maltz v. Jackoway-Katz Cap Co.*, 336 Mo. 1000; 82 S. W. (2d) 909, 913 (1935), the question presented was whether a workman was an *"employee"* under the Missouri Workmen's Compensation Act. It was contended that the findings and conclusion of the Commission "present only a question of fact" and that these were conclusive. Disposing of this contention the court said: "But we cannot agree to the proposition that the Commission's conclusion was one of fact. The whole of the discussion above, in the distinctions therein drawn, has developed that *the term employee is one of legal significance as determined by the application of fixed rules of law, and therefore presents a question of law, and we actually determined it as such.*"

In *Leigh Aitchison, Inc. v. Industrial Comm.*, 188 Wis. 218; 205 N. W. 806, 808 (1925), the question presented was whether a worker was an *employee* under the Wisconsin Workmen's Compensation Act. It was contended that the finding of the Commission on this question was conclusive, but in setting aside the Commission's award the court said: "No one could determine upon the evidence alone in this case whether or not Mrs. Aitchison was an employee. *It is only by the application of legal principles that that result can be arrived at.*"

ployee" should have a definite meaning applicable uniformly—not an uncertain meaning which would vary with the facts of each case.[36]

So a determination of the meaning of this legal term, "employee," should not be relegated to the field of administrative discretion, either on the theory that the Board has better expert qualifications than a court to cope with such determination, or on the theory that clarification of the Congressional standard is unnecessary in the interests of uniformity.

The curtailment of judicial review of an administrative determination applied in *Gray v. Powell*, was placed on two considerations: (a) that the determination of what constituted a "producer" of coal called "for *the expert, experienced judgment of those familiar with the industry*"; and (b) that the act of Congress *in express terms* had

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[36]"To recapitulate, the application of a statute to the situation disclosed by the evidence consists of two main functions: first, the definition or interpretation of the statutory norm, which is a matter of law; second, determining whether the facts disclosed by the evidence meet the demand of the norm as thus defined. The first of these functions—the law function of the court—is proper when the decision purports to establish a general rule. The second—the fact function reserved to the administrative agency—is the one involved when the limits of clarification and definition have been reached. It seems reasonably clear that when Congress in its statutes employed such terms as 'interurban electric railway,' 'spur, industrial, or side track,' and 'operation within the territory for which application is made,' it meant that the words used should have a definite meaning applicable uniformly to all who come within the purview of the general statute, and not an uncertain and variable one dependent upon the facts of various cases, which is necessarily true of such vague phrases as 'reasonable rate' and 'undue preference.' To give to words of the former kind a more precise definition is the task of the courts."

Brown, *"Fact and Law in Judicial Review,"* 56 Harvard Law Rev. 899, 916 (1943).

delegated this determination to the administrative body.[37] Neither of these considerations is found in our case. *Here a determination of what constitutes an "employee"* calls for the judgment of lawyers (a court), not laymen (an administrative board). Here such determination was not by the express terms of the statute confided to the administrative body.

The second ground for curtailment of judicial review, referred to above, *viz.*, that the act of Congress *in express terms* had delegated determination of the question to the administrative body, was the basis for the decision in *Shields v. Utah Idaho R. Co.*, 305 U. S. 177 (1938), cited in *Reed v. Powell*. Indeed, we venture the assertion that the only way in which the *Shields* case may be distinguished from *United States v. Idaho*, 298 U. S. 105 (1936) is upon this ground. In the *Shields* case the

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[37] In *Gray v. Powell* the Act expressly delegated (see 314 U. S. at 405) to the Director of the Bituminous Coal Division of the Department of the Interior the duty of determining whether the Seaboard railroad was a "producer" of coal under the Act. If so it was exempt from the operation of the Act. In the majority opinion the Court, through Mr. Justice Reed, said (p. 411):

> "In a matter *left specifically* by Congress to the determination of an administrative body, as . . . , here . . . the function of review placed upon the courts . . . is fully performed when they determine that there has been a fair hearing, with notice and an opportunity to present the circumstances and arguments to the decisive body, and an application of the statute in a just and reasoned manner . . . Congress, which could have (p. 412) legislated specifically as to the individual exemptions . . ., found it more efficient to *delegate that function to those whose experience in a particular field gave promise of a better informed, more equitable adjustment of the conflicting interests* . . ."

An application of the foregoing to our case is not warranted either (a) on the ground that Congress must be deemed to have *specifically delegated* to the Board a determination of what constitutes "employee," or (b) on the ground that the Board is *better qualified* than a court to determine this question. In our case there is no *specific* delegation, and the courts are better qualified than the Board to determine the meaning of this legal concept.

act of Congress had *expressly delegated* to the Commission the determination of what was meant by "interurban electric railway." In *United States v. Idaho* the act had not delegated to the Commission the determination of what was meant by "spur" track.[38]

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[38]In *United States v. Idaho*, 298 U. S. 105 (1936), the Interstate Commerce Act prohibited a carrier from abandoning any portion of its line without permission of the Interstate Commerce Commission, but provided that this "authority of the Commission" should not extend to the abandonment of a "spur" track. The railroad obtained permission from the Commission to abandon a certain line, the Commission holding that the latter was not a "spur" track. The lower Federal court considered the evidence before the Commission and new evidence and enjoined enforcement of the Commission's order, holding that the line was a "spur" track. In affirming this injunction this Court, through Mr. Justice Brandeis, dismissed the contention "that, since the findings and order of the . . . Commission were made on substantial evidence, they are conclusive" in these words: "For whether certain trackage is a 'spur' is a mixed question of fact and law *left by Congress to the decision of a court—not to the final determination of either the federal or a state commission.*" (p. 109.)

In *Shields v. Utah Idaho Central R. Co.*, 305 U. S. 177 (1938), the Railway Labor Act excepted "interurban electric railways" from its operation and *in express terms* "authorized and directed" the Interstate Commerce Commission, upon request of the Mediation Board "to determine after hearing" whether a railway line fell within this exception. The Commission determined that respondent was not an "interurban electric railway." The lower Federal court held otherwise. In reversing the decree of the latter and upholding the Commission's order, this Court, through Mr. Chief Justice Hughes, pointed out (p. 180) that Congress had the constitutional power to establish categories which should be excepted from the Act's operation; that (p. 182) Congress had *expressly delegated* this power to the Commission; that "unlike the case presented in *United States v. Idaho*, 298 U. S. 105, where the . . . Commission was denied the authority to determine the character of the trackage in question . . . . *the Commission in this instance was expressly directed to make the determination*" (p. 185) and that the Commission having made its determination the "sole remaining question would be whether the Commission in arriving at its determination departed from the applicable rules of law and whether its finding had a basis in substantial evidence or was arbitrary and capricious." (p. 185.) After considering the evidence the Court concluded that the Commission's determination was neither lacking in support nor arbitrary nor capricious.

The National Labor Relations Act does not contain any *express delegation* to the Board of power to determine what is meant by "employee". Therefore, our case falls within the rule of *United States v. Idaho*, and not within the rule applied in the *Shields* case and the *Powell* case, where there was express statutory delegation to the Commission of a power of determination.[39]

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[39]The *Railway Labor Act* (Shields case) provided (45 U. S. C. A., sec. 151) that "the term 'carrier' shall not include any . . . interurban . . . electric railway . . ." and that the "Interstate Commerce Commission *is hereby authorized and directed* upon request of the Mediation Board or upon complaint of any party interested *to determine after hearing* whether any line operated by electric power falls within the terms of this proviso . . ."

The *Bituminous Coal Act* (Powell case) provided (15 U. S. C. A., secs. 833 and 834) that the provisions of sec. 4 (relating to minimum and maximum code sales prices) "shall not apply to coal consumed by the producer . . ." and that "any producer believing that any commerce in coal is not subject to the provisions of" section 4 *"may file with the Commission an application . . . for exemption,* setting forth the facts upon which such claim is based . . . Within a reasonable time after the receipt of any application for exemption *the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of such application* . . ."

In the National Labor Relations Act there is no analogous or similar express delegation to the Board authorizing the latter to hear and determine the question of what is an "employee" under the Act.

In our case a determination of what constitutes an "employee" presents a *legal* question, calling for the judgment of the Court.[40]

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[40]In the following cases a question of statutory interpretation was held to present a question of law for the court's determination:

In *Federal Trade Commission v. Gratz*, 253 U. S. 421, 427 (1920), the meaning of "unfair method of competition" under the Federal Trade Commission Act was held to be a question of law. In *The Tax Line Cases*, 234 U. S. 1, 26 (1914), the interpretation of *"common carrier"* under the Interstate Commerce Act was held to be a question of law. In *United States v. United Verde Copper Co.*, 196 U. S. 207 (1905), the question presented was whether the use of timber from a public domain for smelting purposes was justified under an Act of Congress permitting use of such timber for "building, agricultural, mining or other domestic purposes." The Secretary of the Interior interpreted the Act to exclude use of such timber for smelting purposes. Disapproving the Secretary's interpretation, it was said (p. 215): *"The Secretary of the Interior attempts by it to give an authoritative and final construction of the statute. This, we think, is beyond his power. . . ."* See also: *Walker v. United States*, 83 Fed. (2d) 103, 106 (C. C. A. 8, 1936); *Hemmer v. United States*, 204 Fed. 898, 905 (C. C. A. 8, 1912; aff. 241 U. S. 379); *Jacksonville Paper Co. v. National Labor Relations Board*, 137 Fed. (2d) 148, 150 (C. C. A. 5, 1943, cert. den. 88 L. Ed. Adv. Op. 43).

Cases under state workmen's compensation acts, which hold that a reviewing court is bound by the fact findings of the administrative body if supported by substantial evidence, hold also that *whether facts found produce an employee relationship is a question of law, upon which the court will not be bound to accept the conclusion of the administrative body.* See—*Miller & Lux, Inc. v. Industrial Acc. Comm.*, 179 Cal. 764; 178 Pac. 960, 961 (1919); *Angel v. Industrial Comm.*, 64 Utah 105; 228 Pac. 509, 510 (1924); *Maltz v. Jackoway-Katz Cap Co.*, 336 Mo. 1000; 82 S. W. (2d) 909, 913 (1935); *W. T. Congleton Co. v. Bradley*, 259 Ky. 127; 81 S. W. (2d) 912, 914 (1935); *Krause v. Dept of Labor*, ... Wash. .....; 97 Pac. (2d) 1082, 1083 (1940); *Van DeGarde v. Osceola County Coop. Creamery Assn.*, ... Iowa .....; 4 N. W. (2d) 234, 236 (1942); *Williams v. Branum*, ... Okla. .....; 134 Pac. (2d) 352, 354 (1943).

(3) The Word "Employee" Used in the Act Must be Given its Judicially Settled Meaning.

The Act's definitions of "employer" and "employee" are set out below.[41]

Further enlightenment concerning what Congress intended by these words is not to be obtained from the debates in Congress preceding the passage of the Act.[42]

The definition of "employee" expressly includes individuals, who, under the conventional concept of that term as judicially defined, might not be employees, *i. e.*, individuals whose work had ceased as a consequence of labor

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[41]"Sec. 2. When used in this Act—

* * * * * * * * *

(2) The term 'employer' includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse."

[42]In a communication presented on February 5, 1940, to a Special Committee of the House of Representatives Investigating the National Labor Relations Board (N. L. R. B. Ex. 137, Vol. 2, p. 636 of the verbatim record of that Committee published in 1940 by The Bureau of National Affairs, Inc., Washington, D. C.), the Board stated:

> "Sections 2 (1), and (2), and (3) defining person, employer and employee *were not discussed during the debates in Congress preceding the passage of the Act.*"

disputes or unfair labor practices and who had not obtained other employment.

If, as we contend, Congress intended that the word "employee" should connote the conventional concept of employee as judicially defined, then this express inclusion was not surplusage, for the word "employee" standing alone as judicially defined might not have included certain striking workmen[42] and would not have included discharged workmen; hence this express inclusion was necessary if those individuals were to be protected under the Act.

If, as counsel for petitioner seem to contend (petition for certiorari, pp. 19, 20), Congress intended that the word "employee" should connote all those included within the *"contours of the collective bargaining relation,"*[43] then why was it necessary for Congress to add express language to embrace striking or discharged workmen, and was not the express inclusion of such individuals pure surplusage?

That Congress has added to its definition of "employee" a category which would not have been included within the judicially defined concept of employee, plainly indicates (a) that Congress intended "employee" to have its judicially defined meaning, and (b) that Congress did not intend this

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[42]Certain decisions under the Clayton Act had held that a workman out on strike would not, under certain circumstances, be an "employee." *Dail-Overland Co. v. Willys-Overland, Inc.*, 263 Fed. 171, 188 (Ohio, 1919; aff. 274 Fed. 56); *Canoe Creek Coal Co. v. Christinson*, 281 Fed. 559, 562 (Ky. 1922; reversed on other grounds, 293 Fed. 379, 266 U. S. 42).

[43]Counsels' contention in the court below was equally vague, *i. e.*, that "employees" under the Act meant persons who *"function in a realistic economic sense as employees of an industrial enterprise"* [R. 1847].

judicially defined meaning to be enlarged except by the one addition for which it made express provision, *i. e.*, striking or discharged employees.

Except for this one *inclusion*, and the express *exclusion* of agricultural laborers, domestic servants and individuals employed by parent or spouse, the Act does not define "employee."

Under these circumstances it must be assumed that Congress intended that this term should connote the conventional concept of employee as judicially defined and understood at the time of the enactment. This was the view of the Court below.[45]

This position is supported by authorities which have dealt with the meaning of the word "employee" as used in a number of Federal statutes.[46]

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[45]The Court below gave to the word "employee" its "conventional meaning as developed under the common law and statutory enactments" [R. 1848].

[46]*Federal Employers' Liability Act* (45 U. S. C. A. Sec. 51).

"We are of the opinion that Congress used the words 'employe' and 'employed' in the statute in their natural sense, and intended to describe the conventional relation of employer and employe."

Robinson v. Baltimore & Ohio R. R. Co., 237 U. S. 84, 94 (1914).

Accord:

Hull v. Philadelphia & Reading Ry. Co., 252 U. S. 475, 479 (1920).

Federal Safety Appliance Acts (45 U. S. C. A., Secs. 1-46)

Stevenson v. Lake Terminal R. Co., 42 Fed. (2d) 357, 358, 359 (C. C. A. 6, 1930).

Merchant Marine Act (46 U. S. C. A., Sec. 688).

Loe v. Goldstein, 101 Fed. (2d) 967, 971 (C. C. A. 9, 1939).

Federal Social Security Act (42 U. S. C. A., Sec. 1011b).

"It has been held by this and other courts that employment within the meaning of the statute connotes the legal relation

These authorities follow the settled rule of construction that statutory language which has a meaning sanctioned by judicial decision will be presumed to have been used in that sense.[47]

Resort to the meaning sanctioned by judicial decision is here the more imperative, since, as already pointed out, the word "employee" itself connotes a legal relationship and hence may be understood only by an examination of its legal background. The meaning of "interurban rail-

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ship of employer and employee as those terms were defined and understood at the time of the enactment

Williams v. United States, 126 Fed. (2d) 129, 132 (C. C. A. 7, 1942; cert. den. 317 U. S. 655);

Accord:

Radio City Music Hall Corp. v. United States, 135 Fed. (2d) 715 (C. C. A. 2, 1943);

Anglim v. Empire Star Mines, 129 Fed. (2d) 914, 916, 917 (C. C. A. 9, 1942);

United States v. Griswold, 124 Fed. (2d) 599, 601 (C. C. A. 1, 1941);

Deecy Products Co. v. Welch, 124 Fed. (2d) 592, 597 (C. C. A. 1, 1941);

Jones v. Goodson, 121 Fed. (2d) 176, 180 (C. C. A. 10, 1941);

Texas Co. v. Higgins, 118 Fed. (2d) 636 (C. C. A. 2, 1941).

[47] "It is a well-settled rule of construction that language used in a statute which has a settled and well known meaning, sanctioned by judicial decision, is presumed to be used in that sense by the legislative body."

Kepner v. United States, 195 U. S. 100, 124 (1904).

"The word 'bequest' having the judicially settled meaning which we have stated, we must presume it was used in this sense by Congress."

United States v. Merriam, 263 U. S. 179, 187 (1923).

Accord:

McDonald v. United States, 89 Fed. (2d) 128, 133 (C. C. A. 8, 1937; cert. den. 301 U. S. 697).

way"[48] or "bituminous coal"[49] or "control"[50] or "crew"[51] in a statute may perhaps be ascertained without resort to legal precedents. The meaning of "employee," however, can be accurately determined only by resort to the decisions of the courts. Therefore, when Congress used the word "employee" it must be deemed to have had in mind its judicially settled meaning. If Congress had used the word "contract," certainly it would not be supposed that it meant an unaccepted offer, and there would be resort to the law of contracts to ascertain what was included within the Congressional language. So here, there should be resort to the law of agency to ascertain what Congress meant by this unadorned use of the word "employee."

The opinion in *United States v. American Trucking Assns.*, 310 U. S. 534 (1940), does not repel this conclusion. There non-transportation workers were excluded from the purview of the word "employees" found in provisions of the Motor Carrier Act of 1935 dealing with "maximum hours of service." But they were so excluded for the reason that their inclusion would have been at variance with the Act's legislative history (p. 548), and a uniform Congressional scheme ("settled practice of Congress") to restrict hours of service for transportation workers *only*, evidenced in the case of workers under the Hours of Service Act, the Seamen's Act, and the Civil Aeronautics Authority (pp. 544, 545).

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[48] *Shields v. Utah Idaho Central R. Co.*, 305 U. S. 177 (1938).

[49] *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381 (1940).

[50] *Rochester Telephone Corp. v. United States*, 307 U. S. 125 (1939).

[51] *South Chicago Coal & Dock Co. v. Bassett*, 309 U. S. 251 (1940).

(4) Unless the Word "Employee" as Used in the Act be Given its Judicially Settled Meaning, the Act Is Unconstitutional.

The word "employee" in the Act is a *standard*[52] set by Congress to mark the limits of the Board's jurisdiction.

Unless this word be given its judicially settled meaning, it describes no definite concept. The *standard* then becomes so vague and indefinite as to amount to no standard at all. Lacking an ascertainable and definite standard, the Act would be unconstitutional.[53] Under the rule that an interpretation which would render a statute constitutional will be preferred to one which would render it un-

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[52]Illustrative of *"standards"* found in certain acts of Congress, are the following:

Under the Natural Gas Act of 1938 (15 U. S. C. A., Sec. 717) the words *"just and reasonable"* as applied to rates and charges in connection with the transportation or sale of natural gas, were referred to by Mr. Chief Justice Stone in *Federal Power Comm. v. Natural Gas Pipeline Co.*, 315 U. S. 575, 586 (1942), as "the Congressional standard prescribed by this statute." Under the Federal Trade Commission Act (15 U. S. C. A., Sec. 45), the words *"unfair methods of competition* in commerce" provided "the legislative standard." *Humphrey's Executor v. United States*, 295 U. S. 602, 628 (1935). Under the Communications Act of 1934 (47 U. S. C. A., Sec. 307), Mr. Justice Frankfurter referred to the words "public convenience, interest, or necessity" as "the touchstone for the exercise of the Commission's authority." *Federal Communications Comm. v. Pottsville Broadcasting Co.*, 309 U. S. 134, 138 (1940). Under the Interstate Commerce Act (49 U. S. C. A., 20a), a standard found in the words "public interest" was found to be certain and adequate. *New York Central Securities Corp. v. United States*, 287 U. S. 12, 24, 25 (1932). Under the so-called "grandfather" clause of the Motor Carrier Act of 1935 (49 U. S. C. A., Sec. 306a); the words *"bona fide* operation" and "common carrier by motor vehicle" were held to be a "standard" for the guidance of the Interstate Commerce Commission. *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475, 480, 484, 489, 494 (1942).

[53]*Panama Refining Co. v. Ryan*, 293 U. S. 388, 420 (1935); *Schechter Poultry Corp. v. United States*, 295 U. S. 495 (1935).

constitutional,[54] any interpretation of the word "employee" departing from its judicially settled meaning must be discarded.

There is nothing in the "Findings and Policy" stated by Congress in Section 1[55] of the Act which supplies a definite standard for the administrative body, if "employee" be given a vague and indefinite meaning. That section throughout uses the words "employers" and "employees" without clarifying definition. Therefore, if these words be given a vague and indefinite meaning, Section 1 itself becomes vague and indefinite when attempt is made to ascertain therefrom the class of persons Congress intended should be dealt with by the Board.

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[54] *United States v. Delaware & Hudson Co.*, 213 U. S. 366, 407 (1909).

Knights Templars' Indemnity Co. v. Jarman, 187 U. S. 197, 205 (1902).

[55] "Section 1. The denial by *employers* of the right of *employees* to organize and the refusal by *employers* to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between *employees* who do not possess full freedom of association or actual liberty of contract, and *employers* who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the

(5) According to its Judicially Settled Meaning the Word "Employee" Connotes One Who Performs Services Under Conditions Which Give the One for Whom the Services Are Performed Power of Complete Control and Direction, Not Only as to the Result to be Attained, But Over the Details and Means by Which That Result Is Accomplished.

The existence or non-existence of an employer-employee relationship was and is commonly ascertained judicially by the so-called "control test": (a) that employment does not exist in the absence of a *power of control over the details and means of performance*;[36] and (b) that employment does not exist unless such "control" be a *complete control,*

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purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right to *employees* to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between *employers* and *employees.*

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

[36] *Fidelity & Casualty Co. v. Industrial Acc. Comm.*, 191 Cal. 404, 407; 216 Pac. 578, 579 (1923).

Leukuhl v. Clark, 209 Minn. 276; 296 N. W. 28, 29 (1941).

as distinguished from "mere suggestion as to detail or necessary cooperation."[57]

This "control test" for determining the existence of an employee relationship has been employed for many years. It was employed in cases involving liability for a workman's negligence as early as 1851 in New York (*Blake v. Ferris*, 1 Selden [5 N. Y.] 48; 55 Am. Dec. 304) and as early as 1857 in California (*Boswell v. Laird*, 8 Cal. 469; 68 Am. Dec. 345). In England it was recognized as a test as early as 1840 (*Milligan v. Wedge*, 12 Adol. & El. 737; 113 Eng. Rep. 993) and adopted as a test as early as 1855 (*Sadler v. Henlock*, 4 El. & Bl. 570; 119 Eng. Rep. 209).

With the advent of workmen's compensation legislation this "control test" was uniformly adopted to mark the line

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[57] *Western Indemnity Co. v. Pillsbury*, 172 Cal. 807, 811, 813; 159 Pac. 721, 723, 724 (1916).

As said in *Standard Oil Co. v. Anderson*, 212 U. S. 215, 222 (1909):

> "Here we must carefully distinguish between *authoritative direction and control*, and mere suggestion as to details or the necessary cooperation, where the work furnished is part of a larger undertaking. These principles are sustained by the great weight of authority . . ."

As said in *Winther v. Industrial Accident Comm.*, 16 Cal. App. (2d) 131, 136, 60 Pac. (2d) 342, 345 (1936):

> "Whether the control which an employer has the right to exercise over the manner in which the work is to be performed is best expressed through its modification by the word 'authoritative,' or by the word 'unqualified' or by the word 'complete,' it is clear from the decisions that *it must be a control which reaches into the details of performance* and reserves to the employer the right to direct the manner in which these details are to be carried out."

between employment and non-employment[58] despite the fact that these statutes rested upon a newly adopted theory of liability, *viz.*, that the financial cost of industrial accidents ought to be treated as a part of the expense of production.[59]

These workmen's compensation statutes and the application of the "control test" thereunder were well known to lawyers and legislators in 1935 when the National Labor Relations Act was being drafted and enacted. Therefore, it must be concluded that when Congress used the word "employee" in that Act without further enlightening definition, it intended it to describe the conventional employer-employee relationship as then understood and defined by the "control test."

It is significant that the "*control test*" was promptly adopted *by regulation* to define the term "employment" under the Social Security Act, which was enacted in the month following the enactment of the National Labor Relations Act. Thus, Regulations 91, Art. 3 under the Social Security Act adopted November 9, 1936, like present Regulations 106, Sec. 402.204, defining "employment,"

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[58] *Western Indemnity Co. v. Pillsbury*, 172 Cal. 807, 159 Pac. 721, 723 (1916); *Kelley's Dependents v. Hoosac Lumber Co.*, 95 Vt. 50, 113 Atl. 818, 820 (1921); *Maltz v. Jackoway-Katz Cap Co.*, 336 Mo. 1000, 82 S. W. (2d) 909, 912 (1935); *Henry v. Mondillo*, 49 R. I. 261, 142 Atl. 230, 232 (1928); *Stricker v. Industrial Commission*, 55 Utah 603, 188 Pac. 849, 851 (1920); *Landberg v. State Industrial Acc. Commission*, 107 Ore. 498, 215 Pac. 594, 596 (1923); *W. T. Congleton Co. v. Bradley*, 259 Ky. 127, 81 S. W. (2d) 912, 913 (1935); *Hinds v. Department of Labor and Industries*, 150 Wash. 230, 272 Pac. 734, 735 (1928); *Pace v. Appanoose County*, 184 Iowa 498, 168 N. W. 916, 919 (1918).

[59] *New York Central R. Co. v. White*, 243 U. S. 188, 203 (1917); *Cudahy Packing Co. v. Parramore*, 263 U. S. 418, 423 (1923).

provided: "Generally such relationship exists when the person for whom services are performed has the *right to control and direct* the individual who performs the services, not only as to the result to be accomplished by the work but also *as to the details and means by which that result is accomplished.* That is, an employee is subject to the will and control of the employer not only as to *what* shall be done but *how* it shall be done . . ."[60]

Certain cases decided under state workmen's compensation statutes[61] have considered the status of newsboys, and, applying the "control test," have held that they were not "employees" because not subject to the control requisite to establish such relationship. These cases are:

New York Indemnity Co. v. Industrial Accident Comm., 213 Cal. 43, 1 Pac. (2d) 12 (1931);

Birmingham Post Co. v. Sturgeon, 227 Ala. 162, 149 So. 74 (1933);

Creswell v. Charlotte News Pub. Co., 204 N. C. 380, 168 S. E. 408 (1933);

Bernat v. Star-Chronicle Pub. Co. (Mo. App.), 84 S. W. (2d) 429 (1935);

Balinski v. Press Pub. Co., 118 Pa. Sup. 89, 179 Atl. 897 (1935).

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[60]See *Indian Refining Co. v. Dallman*, 31 F. Supp. 455 (Ill. 1940, aff. 119 Fed. (2d) 417). In *Radio City Music Hall Corp. v. United States*, 135 Fed. (2d) 715, 717 (C. C. A. 2, 1943), Circuit Judge Learned Hand accepted this "as an authoritative definition of the distinction between an 'employee' and 'independent contractor'" but said that it was "really no more than a gloss upon the definition contained in Justice Gray's opinion in *Singer Manufacturing Co. v. Rahn*, 132 U. S. 518, 523 . . ." and that the "test lies in the degree to which the principal may intervene to control the details of the agent's performance; and that in the end is all that can be said, though the regulation redundantly elaborated it."

[61]These statutes defined "employee" in much the same inconclusive way as the Act here involved. See Appendix.

The facts upon which these decisions rest have been summarized in the Appendix to this brief.

A comparison of these facts with the facts presented in the instant case compels the conclusion that newsboys selling this respondent's newspaper were not "employees" in the judicially accepted sense.

(6) The Basic Findings of the Board Do Not Support the Conclusion That the Newsboys Were Employees of This Respondent.

In its decision and order of March 30, 1942, the Board's ultimate conclusion was "that the newsboys involved in this proceeding are *employees* within the meaning of Section 2(3) of the Act" [R. 472]. The Board was required to "state its findings of fact,"[62] and this ultimate conclusion standing alone would not have supported the order. Such order must rest upon a finding of *basic* facts.[63] However, it is indicated [R. 472] in the deci-

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[62] Section 10(c) of the Act provides that "if upon all the testimony . . . the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board *shall state its findings of fact* . . ."

[63] *United States v. Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, 506 (1935); *Atchison, T. & S. F. R. Co. v. United States*, 295 U. S. 193, 202 (1935). As said in *Saginaw Broadcasting Co. v. Fed. Communications Comm.*, 96 Fed. (2d) 554, 560 (App. D. C. 1938; cert. den. 305 U. S. 613), "findings of fact, to be sufficient to support an order, must include . . . *the basic facts*, from which the ultimate facts in the terms of the statutory criterion are inferred."

sion and order of March 30, 1942, that this ultimate conclusion is based upon findings made in the representation proceeding. Therefore, reference must be made to the decision of January 9, 1941 [R. 77 *et seq.*] in the representation proceeding to find the *basic findings* for the Board's ultimate conclusion that employment existed. These basic findings will be found under the heading [R. 88] "Status of the newsboys involved in this proceeding."

Before considering these basic findings, it is important to note that while four cases involving four different newspapers were "consolidated" for hearing before the Board's Trial Examiner [R. 14, 15], it was recognized in the proceedings before the Board that evidence applicable to one newspaper would not be considered as applicable to another newspaper. Thus, the Board stated in its decision and order of March 30, 1942, here under review: "In our present decision, as well as in the Board's decision in the representation proceeding hereinafter referred to, we have not considered evidence with respect to one publisher as applicable to any other publisher" [R. 456, footnote]. Thus, at the hearing in the representation proceeding where the entire evidence relating to newsboy status will be found [R. 523 *et seq.*], it was stipulated between counsel for the Board and this respondent that the testimony of numerous witnesses interrogated concerning practices involving newsboys selling the Times, Herald and News

would have no application to the case of this respondent (the Examiner).[64]

Counsel for this respondent, relying upon these stipulations, refrained from cross-examination of these witnesses. It is not assumed that the Board has any inclination, or, under these circumstances any right, to disavow the binding effect of these stipulations. The separate character of the four cases is recognized in the Board's orders here under review [R. 347 to 350 and 475 to 479], and was preserved by four separate petitions for review in the court below [R. 1699, 1738, 1764, 1806]. Four separate decrees of the court below [R. 1852, 1853, 1854] come before this Court as separate cases: Nos. 336, 337, 338 and 339.

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[64]Thus it was stipulated that the testimony of the following witnesses had no application to this respondent's case:

Gene LeRoy Alley [as to testimony commencing, R. 816] [R. 829]; James V. Apice [R. 1123]; Thomas Hilliard Ash [R. 1124]; Mike Barrett [R. 853]; Julius J. Cohen [R. 1177, 1178]; Max Robert Dyer [R. 1294]; Roy Eley [as to testimony commencing R. 1181] [R. 1211]; [as to testimony commencing R. 1308 and R. 1310] [R. 1310, 1312]; Sid Faber [R. 718]; Harry Thomas Gish [R. 743]; Gus Georgon [R. 1059, 1060, 1064]; William J. Harrison [as to testimony commencing R. 1030 with one exception] [R. 1053]; Geo. E. Hutchinson [R. 1147]; David Kadesh [R. 815]; Sam Kahn [R. 913]; Thomas McKinney [R. 1211]; Raymond F. Marx [R. 1177, 1178]; Isaiah Jacob Moore [R. 1129]; Sidney Glen Murray [R. 1116]; Maurice F. Nickerson [R. 1030]; Gordon Norton [as to testimony commencing at R. 1013] [R. 1024]; Dutton F. O'Brien [with certain exceptions] [R. 1088, 1089, 1131]; Edward Patch [R. 1328]; Harry Plotkin [as to testimony commencing at R. 986] [R. 997]; John A. Roberts [with certain exceptions] [R. 1242, 1243]; Edw. Victor Smith [R. 1113]; Frank Benjamin Smith [R. 1107]; Robert L. Smith [R. 1079; recalled, R. 1636, 1637]; Philip Spampinato [R. 847]; Charles C. Spillers [R. 895]; Arthur Steuart [R. 779]; Philip Joseph Tellis [R. 1248].

Therefore, in determining whether the Board's findings are supported by substantial evidence in this case No. 336, only a part of the evidence in the consolidated transcript of record before this Court may be considered.

The Board's basic findings fall into two categories: (A) those findings which, even if supported by substantial evidence, would not tend to show an employee status, and (B) those findings which, at least as to this respondent, are not supported by substantial evidence.[65]

(A) Certain Basic Findings of the Board Do Not Support the Board's Conclusion That Employment Existed, for Under the Settled Course of Judicial Decision Determining When Employment Arises Such Findings Even if Supported Would Not Tend to Show an Employee Status.

(Finding)

"The newsboy customarily obtains his corner or spot by making application at the plant of the publisher where he consults a district manager. The applicant usually inquires whether there is a corner or spot 'open.'" [R. 95.] *". . . district managers of the Companies allocate corners and spots . . ."* [R. 96.]

A wholesaler frequently consents to supply merchandise to a retailer on condition that the latter will con-

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[65]Unquestionably a finding of the Board will not be upheld unless supported by substantial evidence. *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 229 (1938). "Substantial" evidence means such evidence as would be sufficient to take the case to the jury in a trial by jury. *National Labor Relations Board v. Columbian Enameling & Stamping Co.*, 306 U. S. 292, 299 (1939).

duct his retail sales solely within a certain territory. No employee status arises because such condition is imposed.

The territory here involved included streets and sidewalks. Respondent had no right or power to admit or exclude any newsboy from this public property and never attempted anything of the kind.

But respondent could say to a newsboy, "We will wholesale newspapers to you only so long as you resell them to the public at a certain location." This in substance was what occurred when newsboys were said to have been "placed" or "put" on corners or spots [R. 1381, 1382, 1436, 1438, 1525, 1527. See, also, Statement of the Case, *supra*, under heading "Newsboys' sales territory"]. If the above finding that corners were "*allocated*" means something more than this, then there was no evidence to support the finding.

Cases dealing with newsboy status have held that this circumstance (*i. e.*, limitation of territory) is no indication of an employee relationship.[66]

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[66]See the following cases more particularly referred to in the Appendix:

New York Indemnity Co. v. Industrial Accident Comm., 213 Cal. 43; 1 Pac. (2d) 12 (1931); *Birmingham Post Co. v. Sturgeon*, 227 Ala. 162, 149 So. 74 (1933); *Creswell v. Charlotte News Pub. Co.*, 204 N. C. 380; 168 S. E. 408 (1933); *Balinski v. Press Pub. Co.*, 118 Pa. Super. 89; 179 Atl. 897 (1935).

In *Matter of Federal Ice & Cold Storage Co.* and *Produce Drivers and Employees Union, Local No. 630*, 18 N.L.R.B. 161, 164, certain drivers of ice trucks were required to confine their operations to fixed territories and the Company refused to sell to drivers who failed to abide by this requirement. The Board, in finding that these drivers were *not* employees, declared that this is a "restriction . . . commonly placed on independent dealers by distributors . . ."

(Finding)

"The record is replete with instances in which district managers have removed, permanently or temporarily, newsboys from their corners or transferred them from one location to another, for various reasons." [R. 100.]

A wholesaler must and will on occasion refuse to supply his product to a retailer whose conduct or activities or credit delinquencies threaten detriment to the wholesaler or his product if relations be continued. The fact that a wholesaler does this, or the possibility that he may do this, does not change the relationship between the wholesaler and retailer to one of employer and employee.

This was the only way in which "removal" of newsboys could be accomplished. Obviously a district manager could not have physically removed a newsboy from a public street any more than he could have closed a corner drug store or cigar store to which wholesale deliveries of the newspaper were discontinued.

In *Texas Co. v. Higgins*, 118 Fed. (2d) 636 (C. C. A. 2, 1941) the question presented was whether a distributor (Thomas) for a large oil company (Texas Company) was its "employee" under the Social Security Act. The oil company had the right to terminate the relationship on five days' notice and thereupon buy the distributor's plant at cost. It was contended (p. 638) that this gave the company "absolute power over the business, because by this sanction it could not only intervene when and as it chose, but could direct the details of every move made."

The Court refused to adopt this contention and held that no employee relationship existed.[67]

Cases dealing with newsboy status have held that this circumstance (right to discontinue wholesale deliveries) is no indication of an employee relationship.[68]

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[67]Disposing of this contention, Circuit Judge Learned Hand said (p. 638):

> "The character of the relation was determined by the rights and obligations assumed, and it is no answer that the plaintiff could force a change in these by threatening to terminate the agency. Assuming that Thomas would inevitably have complied with invasions of his rights secured by the contract—which is by no means certain and would obviously depend upon how burdensome these were—legally, the effect would be to force upon him *pro tanto* a new agreement. The plaintiff's power to end the agency was merely a power to free itself from all obligations; it was not a legal power to compel Thomas to assent to new proposals, and it might, or might not, be effective for that purpose. While the agency lasted the plaintiff had no control at all save that reserved, and Thomas was merely a factor receiving goods on consignment, and a factor is not an 'employee' but an 'independent contractor.'"

[68]In *New York Indemnity Co. v. Industrial Accident Comm.*, 213 Cal. 43; 1 Pac. (2d) 12; 14 (1931), each newsboy was "required to be active and vigilant in making sales . . . . Otherwise his . . . . corner would be given to another newsboy . . . ." In *Birmingham Post Co. v. Sturgeon*, 227 Ala. 162; 149 So. 74, 75 (1933), if the newsboy failed to call for his first assignment of papers, another newsboy was assigned to his corner. In *Creswell v. Charlotte News Pub. Co.*, 204 N. C. 380; 168 S. E. 408, 409 (1933), if the newsboys did not stay on the beat assigned or were not active in their efforts to sell papers, "they lost their jobs." In *Bernat v. Star-Chronicle Pub. Co.*, ... Mo. App. ....; 84 S. W. (2d) 429, 431 (1935), if the newsboy failed to conduct his activities "to the entire satisfaction of the companies" then the latter could discontinue supplying him with papers. In *Balinski v. Press Pub. Co.*, 118 Pa. Sup. 89; 179 Atl. 897, 898 (1935), if the newsboy was habitually late at his corner, or sold on a corner assigned to another newsboy, or sold in front of drug stores selling the newspaper, or sold in excess of the fixed retail price, or sold the

(Finding)

"Generally the newsboy is required to be at his post from the time the newspapers customarily appear on the street to the time settlement is made." [R. 98.][69]

When the newspaper appeared, quantities thereof were carried around and dumped at various corners. Know-

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competing newspaper, or "failed to sell a sufficient number of newspapers," he was refused further newspapers.

Yet in none of these cases were these circumstances held to indicate an employee relationship.

Exercise of the right to discontinue dealing with a particular retail vendor was held not to be indicative of employer-employee status in *Matter of Houston Chronicle Publishing Company and Houston Newsboys Union, Local 456*, 28 N.L.R.B. 1043, 1046.

The fact that a newspaper, in its relations with a carrier, reserved the right to terminate such relations in the event the carrier's delivery service became inefficient, was held *not* to make such relationship one of employment. *Bohanon v. James McClatchy Pub. Co.*, 16 Cal. App. (2d) 188, 60 Pac. (2d) 510 (1936); *Batt v. San Diego Sun Pub. Co., Ltd.*, 21 Cal. App. (2d) 429, 69 Pac. (2d) 216 (1937); *Rathbun v. Payne*, 21 Cal. App. (2d) 49, 68 Pac. (2d) 291 (1937); *Gall v. Detroit Journal Co.*, 191 Mich. 405, 158 N. W. 8 (1916); see, also *Chicago, R. I. & Pacif. Ry. Co. v. Bond*, 240 U. S. 449, 455, 60 L. Ed. 735, 738 (1916).

In *Meredith Pub. Co. v. Iowa Employment Security Comm.*, ... Iowa ....., 6 N. W. (2d) 6 (1942), the contract of a magazine subscription solicitor could be "terminated by either party at any time without assigning any cause or giving any prior written notice." It was held, nevertheless, that such solicitor was not an employee under the Iowa Employment Security Law. Accord: *Nelson Bros. & Co. v. Industrial Comm.*, 330 Ill. 27; 161 N. E. 113, 114 (1928).

[69]In a footnote to this finding the Board states: "When the publisher plans to issue an 'extra,' district managers notify the newsboys who are expected to attend their locations on such occasions either before or after the usual selling period." [R. 98, footnote.] There was no evidence that this was a practice followed by this respondent.

ing in advance[70] the hour when the papers they were buying would be ready for delivery and the spot at which delivery would be made, the newsboys were under an incentive to be there at that hour. The newspapers had a fleeting sales value. If they were to be sold at all, they had to be sold during a limited period. The newsboys must have realized the necessity of obtaining their merchandise as soon as it was available and disposing of it while it was saleable. No orders from the district men were necessary to enforce what the self interest of the newsboys dictated. Mr. Hampson, respondent's P. M. street sales manager, who had "worked every district . . . within the city" [R. 1572], testified that he had never given the district men any instructions "in regards to time that a newsboy must be on the corner." [R. 1569.]

Any independent retailer, if he is to continue relations with a wholesaler, of necessity must be diligent to receive and care for the merchandise delivered to him for resale. The fact that district men on occasion told newsboys when they might expect delivery of papers, or even the fact that the newsboys were expected at a certain hour to receive their papers, does not indicate control over the means or methods employed by the newsboys in their operations, or point to an employee relationship.

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[70]If the newsboys inquired about the delivery hour, they would be told [R. 929]. Frequently they needed no such advice. Thus Mr. Seebolt, in charge of respondent's morning downtown street sales, testified that he did not instruct newsboys that they "must show up at a given spot to receive their papers at a given time" [R. 1394, 1395] and he added that the newsboys knew "just the same as I know, when to come down" [R. 1397].

As already pointed out, the newsboys generally quit work when they felt like quitting (see footnotes 21 and 22 herein).

Cases dealing with newsboy status have held that these circumstances are no indication of an employee relationship.[71]

(Finding)

"'. . . *the newsboys are permitted by each of the Companies to return all unsold copies and receive credit for them.*" [R. 91.]

An independent dealer frequently, at the request of a wholesaler, takes quantities of a product which he subsequently is unable to retail and which he is permitted to return to the wholesaler for credit. This is a common practice at drug stores and cigar stores handling magazines.

Cases dealing with newsboy status have held that this circumstance (*i. e.*, privilege of returning unsold newspapers) is no indication of an employee relationship.[72]

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[71]In *Birmingham Post Co. v. Sturgeon:* 227 Ala. 162; 149 So. 74 (1933), the newsboy was required to be at his corner at a stated time to receive his papers. In *Bernat v. Star-Chronicle Pub. Co.*, ... Mo. App. ....; 84 S. W. (2d) 429 (1935), the newsboy was required to go to the railroad depot at a stated time to receive his papers. In *Balinski v. Press Pub. Co.*, 118 Pa. Sup. 89; 179 Atl. 897 (1935), the newsboy was required to report at his corner as soon after school as possible, and if he were habitually late he was refused further papers.

Yet in none of these cases were these circumstances held to indicate an employee relationship.

[72]See the following cases more particularly referred to in the Appendix: *New York Indemnity Co. v. Industrial Accident Comm.*, 213 Cal. 43; 1 Pac. (2d) 12 (1931); *Birmingham Post Co. v. Sturgeon*, 227 Ala. 162; 149 So. 74 (1933); *Creswell v. Charlotte News Pub. Co.*, 204 N. C. 380; 168 S. E. 408 (1933); *Balinski v. Press Pub. Co.*, 118 Pa. Sup. 89; 179 Atl. 897 (1935).

The Board has recognized that the return of unsold newspapers is not a factor indicative of an employer-employee relation. See *Matter of Houston Chronicle Publishing Company and Houston Newsboys Union, Local 456*, 28 N.L.R.B. 1043, 1045.

(Finding)

"The Companies furnish boxes, racks, change aprons, and placards advertising special features contained in the newspapers, bearing the name of the publisher. To facilitate the work of the newsboy and to increase circulation . . . the district managers distribute such equipment and advertising material to the newsboys with instructions to keep the newspapers in the boxes or the racks and to display the advertising matter on posts, fire plugs, or other vantage points." [R. 97, 98.]

There is no evidence connecting this respondent with the distribution of "boxes" or "racks." As to this respondent, that part of the above finding relating to "boxes" or "racks" is unsupported by substantial or any evidence.[73]

Nor does any substantial evidence warrant the finding that this respondent's district managers made it a practice to instruct the newsboys that they *must* display advertising matter. Newsboys Sanchez, Nation and Nixon testified that district man Pierce told them on a very few occasions to see that placards were displayed [R. 1485, 1486, 1586, 1607]. This was the only evidence indicating that any one connected with this respondent ever gave such instructions. This testimony was positively denied by district man Pierce [R. 1537, 1547]. These few isolated instances, narrated by three out of some 453 newsboys [R. 238] concerning one out of not less than 16 district men [R. 1364, 1373], cannot be said to be sub-

[73]Mr. Seebolt, in charge of respondent's morning downtown street sales, testified that during two years prior to the hearing he had not handled or put out any news racks or put out any boxes [R. 1391]. This testimony was not contradicted.

stantial evidence to support a finding that respondent's district men as a matter of practice gave instructions of this character.

The distribution of advertising matter designed to facilitate sales does not point to an employee relationship. It is quite as characteristic of an independent-dealer status as it is of employee status. Many retail stores contain a variety of devices for pictorial display and utility furnished by a manufacturer and advertising the latter's products, although no employment relationship exists between the manufacturer and the storekeeper.

Cases dealing with newsboy status have held that this circumstance (furnishing of advertising paraphernalia) is no indication of an employee relationship.[74]

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[74]In *Balinski v. Press Pub. Co.*, 118 Pa. Sup. 89; 179 Atl. 897 (1935), the newsboys were furnished with money bags bearing the name of the newspaper as well as "shoulder straps" with which to display the papers. This circumstance was held to be no indication of an employee relationship. In *Gall v. Detroit Journal Co.*, 191 Mich. 405; 158 N. W. 36 (1916), a newspaper carrier used his own automobile, but the newspaper's name was painted thereon. Despite this fact and the fact that the newspaper could terminate relations with him at any time, he was held to be an independent contractor.

In *Matter of Federal Ice & Cold Storage Co. v. Produce Drivers and Employees Union, Local No. 630*, 18 N.L.R.B. 161, the company painted its name on ice trucks operated by certain drivers. In finding that these drivers were *not* employees, the Board said: "We are of the opinion that these services amount to no more than aid furnished by a distributor to independent dealers . . ."

(B) THE REMAINING BASIC FINDINGS OF THE BOARD DO NOT SUPPORT THE BOARD'S CONCLUSION THAT THE NEWSBOYS WERE EMPLOYEES OF THIS RESPONDENT, FOR THERE WAS NO SUBSTANTIAL EVIDENCE SHOWING THAT SUCH FINDINGS WERE TRUE AS TO THIS RESPONDENT.

(Finding)

"Checkman" sometimes referred to as "main spot boys," receive a "small salary from the publisher" and are "carried on the publisher's payroll." [R. 90.]

This respondent did not have checkmen. It did not have on its payroll or pay money to any "checkmen," whether so described or described as "main spot boys." [R. 1557.]

(Finding)

". . . *in practice the newsboys cannot determine the size of their respective order without the co-operation of the district manager.*" [R. 92.] ". . . *the newsboy often has no voice in the determination of the established order.*" [R. 93.]

So far as this respondent is concerned, this finding is unsupported by substantial evidence. In this connection the Board points [R. 94] to the testimony of three newsboys:[75] Sanchez, Nixon and Buhl. Certainly there is no other evidence even remotely touching this.

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[75]All the other testimony adverted to by the Board relates to some other newspaper.

Newsboy Sanchez testified that on many occasions [R. 1485] his district man gave him more copies of the midnight edition than he wanted, but that he was permitted to return these the following day [R. 1485, 1491], receiving full credit therefor [R. 1491].

Newsboy Nixon testified that he did not determine the number of papers that he received; that his district man determined this [R. 1606] but when asked if he ever complained to his district man "about not getting enough newspapers," he replied, "No, sir; I never have a solitary time." [R. 1609.]

Newsboy Buhl testified that his district man determined the number of papers that he should receive [R. 1624]; but when asked if he ever asked the district man for more papers than he was given, he replied: "I have never asked him, no." [R. 1624.]

There was no evidence applicable to this respondent that the newsboys ever received *less* papers than they asked for, or, if they received *more* papers than they asked for, that they were not permitted to return and receive credit for all unsold copies.

Mr. Seebolt, in charge of respondent's morning downtown street sales, testified that if a newsboy requested more papers than were handed him, such request was "as a matter of practice" complied with [R. 1393].

(Finding)

The district men "issue detailed directions as to specific places within the newsboy's allotted territory in which to engage in selling activities, particularly with reference to standing in street traffic and covering business establishments where large numbers of people congregate." [R. 96.]

There was no substantial evidence supporting this finding in so far as this respondent's district men were concerned. The Board in this connection points [R. 97] to the testimony of one newsboy,[76] Latham, that *on one occasion* respondent's district manager told Latham to "watch" his corner, and to "work" a nearby market, and to "work the white [traffic] lines," and that *on another occasion* Latham was told by his district man "to instruct an off-spot boy . . . to work in the safety zone." The latter reference is an incorrect summary of Latham's testimony, for Latham did not testify that his district man told him *to give any instructions* to an off-spot boy [R. 1464]. But quite apart from this, evidence of two conversations between one newsboy and one district man [R. 1443, 1444, 1445], is not substantial evidence from which to infer a practice, which, if it existed at all, must have affected not less than 16 district men [R. 1364, 1373] and not less than 453 news-

[76] All the other testimony adverted to by the Board relates to some other newspaper.

boys [R. 238].[77] A finding may not be based on "an inference drawn from tenuous circumstances that at best could have supported only an anemic suspicion."[78]

(Finding)

"The Companies dealt with union representatives with respect to . . . . grievances." [R. 108.]

If this implies that this respondent ever dealt with the union as a representative of respondent's employees, then there was no evidence to support this finding.

At meetings at which this respondent's business manager was present [R. 668], it was stated to union representatives that the newspapers would not consider the negotiation of a contract with the union until it should be decided that the newsboys were employees [R. 672, 679, 680].

(Finding)

"The record also contains evidence with respect to the extent of the Companies' supervision over the conduct of the newsboys while they are engaged in selling newspapers on the street." [R. 103.]

As to this respondent this finding is unsupported by substantial evidence.

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[77]A search of the record for testimony, other than these two conversations, which might conceivably provide support for this finding yields nothing. On one occasion newsboy Deering and district manager Pierce debated whether Deering could sell more papers by standing against a building or away from the building [R. 1497], but this was obviously nothing more than advice as to how more papers might be sold.

[78]*National Labor Relations Board v. Sheboygan Chair Co.*, 125 Fed (2d) 436, 439 (C. C. A. 7, 1942).

First, attention is invited to the testimony referred to by the Board to connect this respondent[79] with such "supervision."

(a) Testimony of Darrell Cole [R. 104].

Three [R. 1450] traveling circulation representatives traveled at intervals throughout the metropolitan area. Of these men, Cole, referred to in the findings, was the only one who testified [R. 1445, *et seq.*]. He has sometimes been referred to as a "checker" [R. 1446]. He traveled a district for several days consecutively, with months between each such "check-up" [R. 1451], to see that the territory was "covered," not only by newsboys, *but by other retailers, e. g., newsstand and drug stores* [R. 1446, 1450]. Mr. Hampson, who received Cole's reports, testified that he was "mainly interested in locations for new outlets" [R. 1570]. There was no evidence that Cole noted or reported the *conduct* of the newsboys while they were selling. There was no evidence that he ever spoke to any of the newsboys. Cole testified that he would simply "observe"; that he never gave orders or instructions to newsboys [R. 1452]; and that he was "never very interested" in the morning newsboys [R. 1450]. None of the newsboys called as witnesses tes-

[79] All other testimony referred to by the Board to support this broad finding relates to some other newspaper.

tified that Cole or any other traveling representative or "checker" ever spoke to them."[80]

Certainly it is a common practice where an independent dealer relationship exists for the manufacturer to send representatives into its distribution territory for the purpose of observing the efficiency or lack of efficiency of independent dealers in conducting retail sales. Such information is essential to the manufacturer in determining whether relationship with retail dealers shall be continued. This practice is no indication of the existence of an employee relationship.

(b) Testimony of newsboy Latham that district manager Jackson told him (Latham) to "get out . . . and sell" his papers: to "get a sandwich and stay outside on the corner" [R. 105].

This testimony does not support this finding of "supervision." It is not corroborated by Jackson's testimony [R. 1442 *et seq.*], although this circumstance is not noted in the findings. Moreover, Latham admitted that he never sold this respondent's newspaper after July, 1939 [R. 1470], so that his narrative, even if credited at its face value, dealt with matters too remote in point of time to have any relevancy.

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[80]There was no evidence whatever supporting the Board's finding in connection with its reference to the Cole testimony that the "supervisor or the investigator transmits the complaints to the district manager who brings the matter to the attention of the offending newsboy with the view of remedying the situation in the future." So far as this respondent is concerned, this is pure speculation and conjecture, even though the Hampson testimony [R. 1570, 1571] be disregarded, as was done by the Board [R. 104, footnote].

Second, a search of the entire record will disclose only the following additional matters (some of which have been referred to previously) which might have a bearing on the contention that there was "supervision" over the conduct of the newsboys while they were selling respondent's newspaper.

(a) Newsboy Seklemian testified that he was told by district manager Volanty "to keep selling—keep pushing" [R. 1405, 1406], and when Seklemian's sales did not seem to be going well, Volanty told Seklemian that the latter was putting him (Volanty) "behind the eight ball," and that if he did not watch his step, he (Volanty) would have Seklemian "behind the eight ball" [R. 1407]. Volanty later said, "I bring your papers; you buy them off me; you sell them . . . Don't forget . . . I am still your boss" [R. 1408, 1409]. On another occasion Volanty told Seklemian that one of Seklemian's regular customers [R. 1419, 1420] had complained that Seklemian was wearing a Bridges button and a C.I.O. button, and asked Seklemian why he didn't hide those buttons [R. 1410, 1411]. The foregoing conversations were denied by Volanty [R. 1515, 1516, 1517, 1518].

(b) Newsboy Deering testified that district manager Pierce told him to "stand away from the building" (Pacific Electric Building) and out on the sidewalk when he (Deering) was selling his papers [R. 1497]. But Deering had *not* been an Examiner newsboy for more than a year prior to the hearing [R. 1626].

(c) Newsboy Latham testified that district manager Jackson told him (Latham) to "work the market around there and watch the corner (Florence and Figueroa), and also work the white line" [R. 1458]; that on another occasion Jackson said that Latham "should build it (Washington and Figueroa) up to a good corner: if I kept myself neat and clean, I should be able to build it up to a good corner" [R. 1459]; that on another occasion Jackson told him (Latham) "to watch the Times guy and to be on my toes"; that if Latham didn't do this the "Times guy" would run ahead of him and sell papers, and that Latham "should work the white lines" [R. 1460]. Jackson testified that he did not recall these conversations [R. 1443, 1444, 1445]. But, as already noted, Latham had not been an Examiner newsboy since July, 1939 [R. 1470, 1471], *i. e.*, for over a year prior to the hearing.

(d) Newsboy Sanchez testified that he was told by district manager Pierce in September, 1938 (nearly two years before the hearing) when the national convenion of the American Legion was held in Los Angeles [R. 1371, 1372], to see that certain special American Legion supplements were put inside newspapers offered for sale [R. 1481, 1482]; and that on another occasion Pierce reprimanded him for being away from his corner [R. 1484, 1485]. All of the foregoing was denied by Pierce [R. 1535, 1536]. Moreover, Sanchez had not been an Examiner newsboy since October, 1939 [R. 1489], *i. e.*, for more than eight months prior to the hearing.

A finding that the conduct of newsboys was "supervised" may not be supported by inferences drawn from these isolated instances of interference by district men, generally denied by the latter. Most of these instances were remote in point of time and it is certain that they involved a very few newsboys.[81] Such testimony does not support an inference that similar acts of alleged supervision were generally practiced by district men in their dealings with the hundreds of newsboys vending this respondent's newspaper. No one in authority in respondent's business is shown to have authorized or ratified such alleged supervision, or indeed, to have had knowledge thereof.

But even if we adopt the unwarranted assumption that these few instances typify practices generally pursued by all district men at the present time, and disregard all testimony to the contrary, they do not support a finding that a relationship of employer and employee existed. They are not indicative of *complete* control by this re-

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[81]*Only ten newsboys were called to testify concerning newsboy operations in that part of these proceedings relating to this petitioner,* viz., Messrs. Seklemian [R. 1403]; Nixon [R. 1601], Johnson [R. 1614], Buhl [R. 1620], Barrett [R. 1423], Latham [R. 1453], Sanchez [R. 1477], Deering [R. 1494, 1624], Siegel [R. 1627] and Nation [R. 1585]. Only the first four were selling petitioner's newspaper at the time of the hearing. The other six had previously stopped selling the Los Angeles Examiner, and were therefore not qualified to testify and did not testify to matters indicative of petitioner's then current methods of operation. Barrett had not sold Examiners for three months [R. 1426]; Latham since July, 1939 [R. 1470, 1471]; Sanchez since October, 1939 [R. 1489]; Deering since June, 1939 [R. 1626]; Siegel had been a *Times* newsboy for six weeks [R. 1628]; and the same was true of Nation. [R. 1585, 1591].

spondent over the means and methods by which the work of the newsboys was performed. At most they amount to nothing more than "mere suggestion as to details . . . necessary cooperation." *Standard Oil Co. v. Anderson*, 212 U. S. 215, 222 (1909). Cases dealing with newsboy status make this clear.[82]

The record here shows no such power of control in this respondent as is requisite to establish an employer-employee relationship. Respondent had no power of control over the *details and means* by which the newsboys sold their papers. Moreover it would have been impracticable for respondent to have exercised anything approaching *complete* control over the selling activities of these numerous workers operating, not on respondent's property, but at widely scattered points on city streets over a wide area.

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[82]In *New York Indemnity Co. v. Industrial Accident Comm.*, 213 Cal. 43; 1 Pac. (2d) 12, 14 (1931), the district manager testified that one of his duties "was to maintain a status of peace and harmony among newsboys, and to so far supervise their daily conduct in the territory . . . as to promote the sale of the largest possible number of . . . newspapers . . ." In *Creswell v. Charlotte News Pub. Co.*, 204 N. C. 380; 168 S. E. 408, 409 (1933), the company's supervisor told the newsboy what the headlines were "and checked up the boys in order to ascertain if they were on the job or needed additional papers." In *Balinski v. Press Pub. Co.*, 118 Pa. Sup. 89; 179 Atl. 897, 898 (1935), the company's supervisor occasionally told the newsboys "how to hold the papers, and urged them to cry out the sale." The supervisor also made periodical inspection trips, and if he was of the opinion that a given newsboy was not making good, he informed the company's general manager, and if the latter was satisfied, the corner was taken away from the newsboy. A like result ensued if the newsboy sold the competing paper. In none of these cases were any of these circumstances held to be an indication of an employee relationship.

II.

The Bargaining Unit Designated by the Board Was Not an "Appropriate" Unit.[83]

(1) Unless the Unit Designated by the Board Was "Appropriate" for Collective Bargaining, Respondent Could Not Have Been Guilty of an "Unfair Labor Practice."

A finding as to the "appropriate" unit was indispensable. The "unfair labor practice" here alleged was respondent's failure to bargain collectively with a representative of the newsboys. The Act makes refusal "to bargain collectively with . . . representatives" of employees an unfair labor practice. But such representatives must have been designated or selected by "the majority of the employees in a unit appropriate for such purposes."[84] Thus the Board, in order to find that such

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[83]This point was raised in the court below [R. 1714, 1717], but was not passed upon. It was raised repeatedly in proceedings before the Board [R. 499, 153, 216, 217, 218, 370, 418, 419, 421, 422, 435, 436, 439, 440, 441].

[84]The pertinent provisions of the Act are:

"Sec. 8. It shall be an unfair labor practice for an employer—

* * * * * * * * * *

"(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a)."

"Sec. 9 (a). Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

"(b) The Board shall decide in each case whether in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

unfair labor practice has occurred, must determine that there has been a failure to bargain with "representatives," and in order to find that representatives have been lawfully designated or selected, the Board must determine the appropriateness of the unit by which they have been designed or selected. *Pittsburgh Plate Glass Co. v. National Labor Relations Board,* 313 U. S. 146, 152, 154 (1941).

(2) The Board's Designation of a Bargaining Unit Was Not Supported by Findings Showing It to Be an Appropriate Unit.

The Board's decision and direction of elections of January 9, 1941 [R. 77] found the following unit to be appropriate as to this respondent [R. 112]:

> ". . . all newsboys engaged in the street sale of the Examiner at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, except temporary newsboys"

and the terms "established spot" and "temporary newsboy" were defined as follows [R. 113, 114]:

> ". . . the term 'established spot' . . . refers to a place where a newsboy has engaged in the street sale of the . . . Examiner . . . 5 or more days a week for a period of 6 consecutive months or more, and the term 'temporary' newsboy . . . includes a newsboy who has engaged in the

street sale of the . . . Examiner . . . at an established spot for 30 days or less."[85]

Newsboys who did not fall within this definition of "appropriate unit" were, of course, excluded from the election conducted on May 15, 1941.[86]

On what basis were certain newsboys included and certain others excluded[87] from the "unit" found to be "appro-

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[85]The decision and order of March 30, 1942, here under review, sets forth the definition of appropriate unit without defining what is meant by the terms "established spots" and "temporary newsboys" [R. 463]. However, since this decision and order adopts and reaffirms without modification the definition of appropriate unit found in the decision and direction of elections of January 9, 1941 [R. 112], there can be no doubt that these terms are to be understood as defined in such decision and direction of elections [R. 113, 114].

[86]See certification of representatives, dated October 20, 1941, in which it is declared that as a result of the election the Union has been designated and selected by a majority of all newsboys engaged in the street sale of the Examiner, at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles, California, excluding temporary newsboys, as their representative for the purposes of collective bargaining [R. 239]. It will also appear that at such election 161 newsboys voted for the Union out of a total of 321 actually voting and out of 453 declared to be eligible to vote [R. 238].

[87]It affirmatively appears, without contradiction, that there were newsboys not included in the "unit" found to be appropriate. Thus an election was held subsequent to the representation proceedings. Of the votes not counted because of challenges, 32 were not counted on the following grounds: that these newsboys "were not within the unit described in the Board's Order" [R. 202], or "were not engaged in selling 4 or more hours a day," [R. 204] or had "secured their newspapers from motor wholesalers . . . said transaction involving a sales activity which introduces elements making questionable the possibilities of full requirement with the Board's order" [R. 204, 205], or that their "sales locations" were "not within the district described in the Board's order" [R. 205], or that they were "relief men" [R. 206], or "did not spend sufficient time in selling" [R. 206], or that they "were not engaged in selling within the official limits of the City of Los Angeles" [R. 206].

priate"? What are the Board's findings which are assumed to support this line of demarcation?

Under Sec. 10(c) of the Act the Board was required to "state its findings of fact."

When a statute requires an administrative body to make findings, a failure to do so will invalidate its order.[88] If the findings made are inadequate to support the administrative conclusion, an order resting thereon will not be upheld. Moreover, findings which the administrative body might have made but did not make may not be availed of to support its order.[89]

In the complaint proceedings in our case [R. 455 *et seq.*] the Board made no findings showing why the unit so designated was an appropriate unit. The Board merely referred to its earlier order in the representation proceeding [R. 463, 464]. Turning to the latter [R. 76 *et seq.*] and to that part of the order which designates the appropriate unit [R. 112 *et seq.*] the findings stated in connection with this unit designation may be summarized as follows:

(a) That "the Union desires to exclude bootjackers, temporary, and part-time newsboys since they consist

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[88] *City of Yonkers v. United States*, ... U. S. .....; 12 Law Week 4104 (Jan. 3, 1944); *Phelps Dodge Corp. v. National Labor Relations Board*, 313 U. S. 177, 197 (1941); *United States v. Chicago, M., St. P. & R. Co.*, 294 U. S. 499, 506 (1935); *Atchison, T. & S. F. R. Co. v. United States*, 295 U. S. 193, 202 (1935); *Wichita R. R. & Light Co. v. Pub. Utilities Comm.*, 260 U. S. 48, 58, 59 (1922).

[89] *Securities and Exch. Comm. v. Chenery Corp.*, 318 U. S. 80, 94 (1943).

largely of schoolboys who do not depend upon the vending of newspapers for a livelihood and because of the irregularity of their employment" [R. 114, 115], and

(b) That the Union desires to exclude suburban newsboys, except Times newsboys in Glendale, because the Union's "organization has not as yet been extended to the suburban group" [R. 115], and

(c) That those whom the Union desires to be *included* "are, in general, mature individuals who daily rely upon their earnings from the street vending of newspapers as their source of support" [R. 115], and

(d) That the Union is the only labor organization existing among the newsboys and its organization has not yet extended to suburban newsboys other than Times newsboys in Glendale [R. 115], and

(e) That the designated unit will insure to employees the full benefit of their right to self-organization and collective bargaining and otherwise effectuate the policies of the Act [R. 116].

Finding (e) above is not the kind of finding which will support an exercise of discretion by the Board. In *Phelps Dodge Corp. v. National Labor Relations Board*, 313 U. S. 177 (1941), the Board had directed that the company employ workmen discriminated against who had obtained substantially equivalent employment, stating that this was "affirmative action designated to effectuate the policies of the Act" (19 N. L. R. B. 547, 598). Despite this general finding, the cause was remanded because the Board

had failed to find the facts upon which its order was predicated.

Finding (a) above is merely a recitation of what the Union desires and the Union's reason for that desire. It is not a finding of fact that excluded newsboys were largely schoolboys.[90]

Finding (c) above does no more than state that the Union "desires" that there be included in the unit mature individuals who make their living from newspaper sales. *It is not a finding that the unit designation adopted by the Board will bring about this result. It is not a finding that this unit designation will in fact include or tend to include such mature individuals. It is not a finding, and there is no finding, that this unit designation will include or tend to include all of such mature individuals, or that a number of these mature individuals will not be excluded from the unit.*

Thus the unit designation may not be rationalized and supported on the ground that it includes *all* mature individuals who make their living from newspaper sales, and

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[90]If this were to be taken as a finding of fact, it would be a finding unsupported by substantial evidence in so far as this respondent is concerned. There was no testimony that there were any schoolboys selling respondent's newspaper. The only testimony was to the contrary. Night district men Navarro and Volanty testified they had no "schoolboys" in their districts [R. 1438, 1525]. Night district man Jackson testified to the same effect [R. 1442]. Mr. Seebolt, in charge of morning downtown street sales, testified that there were no school boys selling in his district [R. 1380].

excludes *only* individuals in a different category, *for there are no findings which state this to be the fact.*[91]

Findings (b) and (d) above are to the effect that the Union is the only labor organization existing among the newsboys and that its organization has not been extended to suburban newsboys (except Times newsboys in Glendale). It is assumed that these findings are stated in the hope that they will support that distinction in the unit designation which *includes* city newsboys and *excludes* suburban newsboys. At least there are no other findings which by possibility would support this distinction. There are no findings that newsboys within and newsboys with-

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[91]Even if there had been such findings, the unit definition itself would nullify any attempt to rationalize the unit on this ground. This unit definition, if made operative, would certainly not result in including all mature professional news vendors and excluding only individuals of a different type. *Mature professional news vendors would be both included and excluded.* Thus a mature individual relying on his newspaper sales for a livelihood will be *outside* the unit, even though he sells for 4 or more hours a day, 5 or more days a week:

(a) If he takes a location where the previous newsboy had been selling only 4 days a week (for such location would not be an "established spot");

(b) If he takes a location where the previous newsboy had been selling 5 or more days a week, but doing so for less than 6 consecutive months (for such location would not be an "established spot");

(c) If he takes a location where the previous newsboy had not been selling the Los Angeles Examiner (for such location would not be an "established spot");

(d) If he takes a location outside the city boundary.

out the city boundaries [see R. 186, Exhibit "B"] differ in age or hours of work or methods of operation.[92]

It is submitted that a unit may not be justified *solely* on the basis of a union's desire *that the unit area be confined to the area the union has succeeded in organizing.* Under Sec. 9(b) of the Act (see footnote 84) the Board may select an "employer unit, craft unit, plant unit, or subdivision thereof." This is the limit of the Board's authority. (*Pittsburgh Plate Glass Co. v. National Labor Relations Board*, 313 U. S. 146, 165.) A unit whose boundaries are fixed *solely* because they coincide with the area a union has succeeded in organizing is not framed in accordance with the dictates of this statutory limitation.

None of the Board's findings in connection with the designation of a unit support such designation. Factors commonly relied upon in designating units have been ignored.[93] No facts are found which show any reason-

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[92]Mr. Hampson, in charge of night street sales, testified that a part of the territory of the night district men was outside of the city limits [R. 1365]. Of course newspapers were sold by such district men to newsboys outside those limits in the same manner as to newsboys within the city.

[93]These factors are adverted to in *Pittsburgh Plate Glass Co. v. National Labor Relations Board*, 313 U. S. 146, 153 (1941):

> "(1) the history, extent, and type of organization of the employees; (2) the history of their collective bargaining, including any contracts; (3) the history, extent, and type of organization, and the collective bargaining, of employees of other employers in the same industry; (4) the relationship between any proposed unit or units and the employer's organization, management, and operation of his business, including the geographical location of the various plants or parts of the system; and (5) the skill, wages, working conditions, and work of the employees."

able or logical basis for the distinction between newsboys included in and newsboys excluded from the unit. The Board has failed to disclose a legal basis for its order. (*Phelps Dodge Corp. v. National Labor Relations Board*, 313 U. S. 177, 197.)

In conclusion, it is respectfully submitted that the decree of the Circuit Court of Appeals [R. 1852, 1853] should be affirmed.

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January 18, 1944.

APPENDIX.

DECISIONS OF STATE COURTS HOLDING THAT NEWSBOYS ARE NOT EMPLOYEES, WITH SUMMARY OF FACTS IN EACH CASE.

In *New York Indemnity Co. v. Industrial Accident Comm.*, 213 Cal. 43, 1 Pac. (2d) 12 (1931), newspapers were delivered to a newsboy daily by a district manager acting for two Los Angeles newspaper publishers. In the case of one newspaper ("Herald"), the newsboy paid 2¢ per copy, either at the time the papers were delivered to him or at the close of sales for the day. Unsold copies of such paper were not returnable. In the case of the other newspaper ("Record") sold by the boy, credit was given him for returned copies. In the case of both newspapers the newsboy's profits consisted of the difference between the price he paid and the price at which the publishers permitted him to resell. The newsboy was allotted a specified corner or street location by the district manager (an employee of the publishers), who instructed him "not to intrude upon or interfere with the corner or place allotted to another. Each . . . . newsboy was expected and in fact required to be active and vigilant in making sales of a prescribed minimum number of each of said newspapers . . . ; in short, to be a 'hustler' in making sales. Otherwise his allotted place or corner would be given to another newsboy and he would be refused further copies by the district manager. The latter testified that one of his duties as such district manager . . . . was to maintain a status of peace and harmony among the newsboys, and to so far supervise their daily conduct in the territory . . . as to promote the sale of the largest possible number of copies

of each of said newspapers . . . ." The California Workmen's Compensation Act at the time of this decision[90] defined "employee" as "every person in the service of an employer as defined in section seven hereof under any appointment or contract of hire or apprenticeship, express or implied, oral or written." (Sec. 7 referred to defined "employer" as ". . . every person . . . and corporation . . . who has any person in service under any appointment or contract of hire, or apprenticeship, express or implied, oral or written. . . .")

It was held that the newsboy was *not an employee* entitled to the benefits of this statute. The court stated (213 Cal. at 48, 49) that the "essential inquiry" was "whether the nature and degree of control exercised by the publishers . . . through their district manager, was such as would suffice to justify the finding of the Commission to the effect that newsboys . . . stood in relation of employees of the publishers . . . ." and concluded the "control which the publishers . . . undertook to exercise . . . would not as a matter of law be sufficient to constitute such newsboys . . . employees . . . We are satisfied that the finding of the Commission . . . amounted to an erroneous legal conclusion . . ."

This case was relied upon and approved in *State Compensation Ins. Fund v. Industrial Accident Comm.*, 216 Cal. 351, 14 Pac. (2d) 306 (1932), dealing with the status of a newspaper "routeman" and route carrier, and

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[90]This case was decided June 27, 1931. Effective August 14, 1931, an amendment to this statute became effective excluding from its operation "any person engaged in vending . . . any newspaper . . . where the title to such newspaper . . . has passed to the person so engaged . . ."

was followed in *Associated Indemnity Corp. v. Industrial Accident Comm.*, 115 Cal. App. 754, 2 Pac. (2d) 51 (1931), and *Hartford Acc. & Ind. Co. v. Industrial Accident Comm.*, 123 Cal. App. 151, 10 Pac. (2d) 1035 (1932), dealing with the status of newsboys.

In *Birmingham Post Co. v. Sturgeon*, 227 Ala. 162, 149 So. 74 (1933), the newsboy was assigned a certain "corner" by the company. He was required to call at the company's office at a certain hour each day to obtain a supply of papers. Subsequent editions were delivered to him at his corner at stated hours and he was required to be there to receive the same. He was not permitted to sell any papers except those published by defendant "except after checking in at defendant's office on Saturday nights." After reaching his corner he was permitted to sell papers *only* along a prescribed route, and at not less than the newspaper's published retail price. He could turn in unsold copies, but was required to account daily for all copies received less those turned in. If he failed to call for his first assignment of papers, another newsboy was assigned to his corner. The company had the right to dispense with his services "at any time they became unsatisfactory for any reason." The Alabama Workmen's Compensation Law defined "employer" as "every person . . . . who employs another to perform a service for hire and to whom the 'employer' directly pays wages," and provided also that, "The terms 'employee' and 'workman' are used interchangeably . . . ." It was pointed out (149 So. at 77) that under this statute the test of employment was whether defendant had the power to control the means and agencies by which the work was done. It was held that the newsboy was *not*

an employee under this statute. Although the court says (149 So. at 80):

> "We have recognized that our statute is to be liberally construed to the end that its wise and humane purpose may be advanced . . ."

it declares (149 So. at 79):

> "Under the facts as here presented, we think it clearly appears there was neither sufficient control exercised, or right to do so, reserved, as to support the relation of employer and employee."

In *Creswell v. Charlotte News Pub. Co.*, 204 N. C. 380, 168 S. E. 408 (1933), the newsboy was engaged by the company's supervisor, who turned over to him daily a certain number of newspapers on credit. Subsequent settlement was at the rate of 3¢ per copy, the newsboy retaining as his own the selling price above that rate. All unsold papers were returned at the end of the day. The newsboy was assigned a regular territory. The company's supervisor told the newsboy what the headlines were "and checked up the boys in order to ascertain if they were on the job or needed additional papers. If they did not stay on the beat assigned or were not active in the effort to sell papers, they lost their jobs." The newsboy solicited whom he chose "and otherwise conducted the selling according to his own notions and methods." The Workmen's Compensation Act of North Carolina defined "employee" to mean "every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written." It was held that the newsboy was *not an "employee"* entitled to

the benefits of this Act. The court said (168 S. E. at 409):

> "While there was certain supervision exercised by the agent of defendant with respect to the territory assigned, *the control over the methods of selling was too uncertain, indefinite, and remote to constitute the relationship of employer and employee.*"

In *Bernat v. Star-Chronicle Pub. Co.*, ... Mo. App. ....., 84 S. W. (2d) 429 (1935), the newsboy agreed to pay for the papers of two newspaper publishing companies monthly at a wholesale rate and to sell only at the companies' established retail rate. His list of newspaper subscribers belonged to the company. The company reserved the right to sell to as many news dealers in the locality as it desired. If the newsboy failed to conduct his activities "to the entire satisfaction of the companies" then the latter could discontinue supplying him with papers. The newsboy was required to confine his activities to the town in which he lived, and was permitted to return unsold papers for credit. He was supposed to go to the railroad depot each day for the purpose of receiving his bundles of papers. The Missouri Workmen's Compensation Law defined "employee" as "every person in the service of any employer . . . under any contract of hire, express or implied, oral or written, or under any appointment or election." It was held that the newsboy was *not an employee* entitled to the benefits of this statute, the court saying (84 S. W. (2d) at 433):

> "Undoubtedly the form of definition employed indicates a legislative intent that . . . the term 'employee' shall be given a broad meaning

> *"Undoubtedly a certain limited right of supervision was exercised or at least reserved* to the companies so as to enable them to see to it that the final result contemplated by the arrangement was accomplished, but not such right of supervision over the methods, details, and particulars of the work as to give rise to the relationship of employer and employee. . . .
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> . . . . . .
>
> ". . . Furthermore, it is significant that . . . . the two publications being sold by claimant at the time of his injury were strictly competitive and not complementary, which is an added reason for finding that his actual status was inconsistent with that of an employee of the two publishing companies."

In *Balinski v. Press Pub. Co.*, 118 Pa. Sup. 89, 179 Atl. 897 (1935), the company's district manager was instructed "to place" a newsboy on street corners in his district, the boy to have "more or less exclusive rights" to sell the paper in the vicinity of his corner. The company furnished the newsboys with money bags bearing the name of the newspaper as well as "shoulder straps" with which to display the papers. The district manager furnished the newsboys copies of the papers to be sold and each evening accepted back the unsold papers. He also occasionally offered a prize to the newsboy who would sell the most newspapers. The newsboys were required to report at their assigned corners as soon after school as possible. If a newsboy was habitually late at his corner for his first delivery of papers, "the corner would be taken away and further papers refused." Each newsboy was asked not to sell on corners assigned to other newsboys, or in front of drug stores selling the newspaper.

If he continued to do so his corner was taken away and further papers refused. The same result followed if the newsboy sold papers in excess of the price fixed, or sold the competing newspaper or "failed to sell a sufficient number of newspapers." Occasionally the company's supervisor told the newsboy "how to hold the papers, and urged them to cry out the sale . . ." The supervisor also made periodical rounds of inspection and if he was of the opinion that the newsboy was not making good, he informed the district manager, and if the latter was satisfied, the corner was taken away and further papers refused. Each newsboy was supposed to wait each evening until the district manager had come around and settled with him. It was held that the newsboy was *not an employee* under the Pennsylvania Workmen's Compensation Act. The court said (179 Atl. at 899):

> "The evidence establishes that Shanahan (the district manager) neither independently, nor as an agent of the appellant (newspaper), exercised such authority or control over the decedent (newsboy), or the newsboys generally, as to establish the relationship of master and servant, thus constituting the decedent an employee of the appellant."

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OCT. 8 1943
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1943

No. 337.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

STOCKHOLDERS PUBLISHING COMPANY, INC.,

Respondent.

BRIEF OF RESPONDENT STOCKHOLDERS PUBLISHING COMPANY, INC. (337) IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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BRIEF OF RESPONDENT STOCKHOLDERS PUBLISHING COMPANY, INC. (337) IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Respondent, STOCKHOLDERS PUBLISHING COMPANY, INC., publisher of the DAILY NEWS at Los Angeles, California (hereinafter referred to as "NEWS"), submits the following brief in opposition to the Petition of National Labor Relations Board for a Writ of Certiorari in case Number 337.

Opinion Below.

The opinion of the Circuit Court of Appeals—Ninth Circuit—is reported in 136 Federal (2d) 608.

Jurisdiction.

The Board's Petition for Writ of Certiorari was filed September 9, 1943. Notice of the filing of such petition, with copy thereof, and of the record, was served on counsel for this respondent on September 18, 1943. Jurisdiction of this Court is invoked under Section 240(a) of the

Judicial Code as amended by the Act of February 13, 1925, and Section 10(e) and (f) of the National Labor Relations Act.

Questions Presented.

This respondent submits that petitioner's "Questions Presented" is inaccurate in certain respects, notably

> Question 2: "Whether the Board properly found that persons who sell newspapers *subject to the supervision and control of the Publishing Company* are employees within the meaning of Section 2(3) of the Act." (Emphasis supplied.)

It is submitted that the clause "subject to the supervision and control of the Publishing Company" is improperly included as a part of the question in that it is thereby assumed that "supervision" and "control" are conceded and recognized, while as a matter of fact such supervision and control was one of the prime controversial questions.

It is further submitted that the scope of petitioner's question 3,

> "Whether the context of the Act furnishes the basis for a definition of employment broader in scope than the common law definition of a servant."

is too restrictive. Respondent would substitute for such question the following:

> Does the definition contained in the Act,[1] of the word "employee", justify any conclusion that it was intended that such word "employee" be used in any sense except according to the long established and common acceptation of the term?

[1] Sec. 2(3)—N. L. R. A. "The term 'Employee' shall include any Employee."

Statement.

Respondent takes exception in certain respects to petitioner's statement in summarizing the evidence.

Petitioner states (p. 6) that

> "The newsboys are 'hired' and 'fired', disciplined, directed, and supervised by respondents through supervisory employees known as the 'district manager' or the 'district man'."

The record references given as to the NEWS fail to support the statement, and the entire record discloses the fact that respondent has consistently denied that it ever "employed" any district managers and there is no substantial evidence to the contrary in the entire record.

Petitioner further states (p. 6) that

> "The district managers keep lists of the newsboys in their districts, the locations where they are stationed, the quota assigned to each boy, the names of checkmen or 'main spot' boys through whom they distribute, and the amount so sub-distributed."

The reference given as to the NEWS consists of merely an exhibit containing a list of "checkmen", and does not at all support the foregoing statement.

Again, at page 6, petitioner states in substance that the District Managers determine the number of newspapers to be taken out each day, and sometimes treble or double the usual number. The reference offered to sup-

port this statement in so far as the NEWS is concerned does not support the same.[2]

It is submitted that none of the references offered by petitioner, at page 7, support the statement that the District Managers of the NEWS

> "recommend newsboys for discharge, discipline or reprimand. . . ."[3]

Further, petitioner states (p. 8):

> "The newsboy obtains employment *by applying at the plant* to the district manager, who then assigns him to a particular spot, if an opening is available." (Emphasis supplied.)

This statement is not supported by references offered as to the NEWS.

Petitioner states (p. 8):

> "All respondents also furnish transportation to the newsboys from the plant to their respective corners, and after work is over bring them back."

---

[2](789)—Question by counsel for respondent NEWS:

"Q. Do you get full returns on the NEWS? A. I do.

Q. You can regulate your orders in any way you want? A. The District Man regulates the orders but he gives me full returns. *He don't tell me how many papers I should have.* . . ." (Emphasis supplied.)

[3]The references disclose the fact that in one instance a NEWS District Man questioned a newsboy as to why he had been off of his corner, and was advised by the newsboy that he had been sick and that he (the newsboy) had employed his own relief man [R. 733, 737-738]. The other reference refers to the statement of a newsboy that he had been told how to use a display rack, and he stated that he knew how to use it without any instructions [R. 777-78].

Three references are given to support this statement as to the NEWS—R. 1157 refers to another respondent. R. 1171 refers to another respondent. R. 1115 justifies the statement only to the extent that a District Man for the NEWS testified that he picked up some of the boys and brought them to their corners. No statement was made to the effect that he picked them up at the plant or to the effect that he returned them from their work, nor that such or any such practice was common amongst District Men of the NEWS.

Petitioner does not even endeavor to support, as to the NEWS, the statement made on page 8 that the newsboys are subject

> "to removal at will and to transfer or disciplinary lay-offs by the District Managers."

We find no support in the record for the statement appearing on page 12 to the effect that newsboys were regarded by representatives of this respondent as employees, and we submit that the statement at the foot of page 11, to the effect that checkmen and newsboys regarded themselves as employees, is immaterial.

"Specifications of Errors to Be Urged"—(by Petitioner).

It is submitted that petitioner erred in suggesting that the Circuit Court of Appeals erred

> "in holding that the Board's denial of Respondent's claim of exemption from the Statute was improper."

This respondent made no such or any claim of exemption from the statute, nor do we find anything in the opinion of the Court purporting to pass upon any alleged claim of exemption.

Respondent has consistently contended that the Board was without jurisdiction by reason of the absence of the employer-employee relationship, and has at no time claimed or even made reference to an "exemption." The only "exemption" referred to in the National Labor Relations Act of which respondent is aware, is found in Section 2(3):

> "The term 'employee' . . . shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse."

Respondent has not and does not maintain that newsboys selling its papers come within any such exceptions or exemptions.

ARGUMENT.

POINT I.

The Decision of the Court Below Does Not Result in a Conflict of Decisions.

The Court stated in the case of *Walker v. Altmeyer*, (C. C. A. 2) (decided July 12, 1943) and cited and relied upon by petitioner, as an example of a conflict of decisions, as follows:[4]

> "The facts underlying that (the Referee's) decision *which were found on substantial evidence*[5] were of course binding on the District Court. . . . It was the judgment of the administrative body as to employer-employee relationship rather than that of the Court which the statute made effective *provided*[6] that judgment was based upon conclusions reasonably reached upon due consideration of all relevant issues presented."[6]

In the case at bar the Court below stated (Opinion, P. 1849—106 Fed. (2d) 613):

> "The question for decision as to each newspaper separate from any other paper is whether there is *substantial evidence*[5] that the publisher exercises, or has the right to exercise, sufficient control over the activity of the newsboys defined in its appropriate unit to support the Board's decision that they were employees under Section 2(3) of the National Labor Relations Act."

---

[4]Exact page not ascertainable at this writing.

[5]All emphasis ours.

[6]Which is to say, in effect, provided the judgment of the administrative body was based upon substantial evidence.

and then states (P. 1850):

> ". . . We believe even though all the testimony be applied to all petitioners, or that induced upon behalf of each be applied to it alone, *that there is not substantial evidence herein*[7] to support the Board's determination that the newsboys are 'employees' of the publishers. . . ."

Again at the conclusion of its Decision (P. 1851) the Court states, as follows:

> "We think the Board is not supported by *substantial evidence*[7] in its finding that the 'newsboys' are employees of the publishers whose newspaper they vend."

Certainly the foregoing decisions therefore are not in conflict.

The difference between the controlling decision of the Court below in the instant case and the dissenting opinion[8] can be briefly stated as follows:

The Court held that there was no substantial evidence from which the Board could reasonably draw an inference of the employer-employee relationship. The dissenting opinion while conceding the right of the Circuit Court to determine whether or not the Board could reasonably infer such relationship from the evidence before it[9]

---

[7]Emphasis ours.

[8]Referred to on page 12 of the Petition for Writ of Certiorari.

[9]Dissenting Opinion, p. 1852—136 Fed. (2d) 614:

> ". . . The sole question before us is whether the Board reasonably could infer from the varied incidents of the relationship between the men and the publishers, that it is one of employer and employee."

concluded that it, the Board, could so do, while the controlling opinion found that there was not substantial evidence to support the findings.

Nor is the decision of the Court below in the case at bar in conflict with the case of *Gray v. Powell*, 314 U. S. 402, or *South Chicago Coal and Dock Co. v. Bassett*, 309 U. S. 251.

Gray v. Powell, supra, involved the determination by the director of the Bituminous Coal Division of the question of whether or not a railroad company was a "producer" of coal. Under the provisions of the Bituminous Coal Act (particularly Section 4(a)) the matter of the determination of such question was specifically delegated by Congress to the Commission. No such delegation with respect to the determination of the meaning of the word "employee" was made by Congress in the National Labor Relations Act—rather was the word "employee" given (in effect) by the provisions of Section 2(3) of the Act, its ordinary and conventional meaning.

The Court stated in *Gray v. Powell, supra*, after discussing the delegation of certain powers to the administrative body, as follows (p. 411):

> "Such a determination as is here involved belongs to the usual administrative routine. Congress, which could have legislated specifically as to the individual exemptions from the Code, found it more efficient to delegate that function to those whose experience in a particular field gave promise of a better informed, more equitable, adjustment of the conflicting interests of price stabilization upon the one hand and producer

> consumption upon the other. . . . . where as here *a determination has been left to an administrative body*[10] this delegation will be respected and the administrative conclusion left untouched."

Even where such matters are specifically delegated by Congress to an administrative body as in the case of *Gray v. Powell, supra*, this Court was still careful to preserve a right of review of the acts of the administrative body, stating at page 411:

> "In a matter left *specifically*[10] by Congress to the determination of an administrative body, as the question of exemption was here by Secs. 4-II(1) and 4-A, the function of review placed upon the Courts by Sec. 6(b) is fully performed when they determine that there has been a fair hearing, with notice and an opportunity to present the circumstances and arguments to the decisive body, and *an application of the statute in a just and reasoned manner.*"[10]

and continuing at page 413:

> "Unless we can say that a set of circumstances deemed by the Commission to bring them within the concept 'producer' is so unrelated to the tasks entrusted by Congress to the Commission as in effect to deny a sensible exercise of judgment, it is the Court's duty to leave the Commission's judgment undisturbed."

The case of *South Chicago Co. v. Bassett, supra*, turned on the question of whether or not a certain employee of the petitioner who met death while engaged in performing certain work for petitioner, was a member of a "crew" within the meaning of Longshoremen's and Harbor Work-

---

[10]Emphasis ours.

ers Compensation Act, 44 Stat. 1424; 33 U. S. C. and U. S. C. Supp. Sec. 901 *et seq.*, in which Act the term "employee" was restrictively defined as follows:

> "The term 'employee' does not include a master or member of a crew of any vessel nor any person engaged . . . to load or unload . . . any small vessel. . . ."

After pointing out (p. 257) that the determination of the question of whether or not the deceased was "a member of a crew" had been confided by Congress to the Deputy Commissioner, the Court stated, page 258:

> "Hence the Court of Appeals correctly ruled that his (Deputy Commissioner's) finding, *if there was evidence to support it*," was conclusive and that *it was the duty of the District Court to ascertain whether it was so supported*" and, if so, to give it effect without attempting a retrial."

It will again be observed that this Court, even where authority to determine certain specific facts has been delegated by Congress, reserves the absolute right to determine whether the conclusions reached by the administrative body were justified and whether or not the evidence adduced was sufficient to support such conclusions. It is significant that the Supreme Court duly considered and discussed, in its opinion in the "Bassett" case, the evidence adduced before the Commission, which statement can be applied with like effect to the case of *Gray v. Powell, supra*. Indicating rather conclusively that the right of the Courts to determine the sufficiency of evidence adduced before an administrative body or the reasonableness of the application of such evidence in support of findings is not to be

impaired—any other conclusion would result in the sapping of judicial power as it exists under the Constitution of the United States.

A further important distinction should be noted between the case at bar and the case of *South Chicago Co. v. Bassett, supra.* In that case petitioners urged that the question of whether or not the decedent was a member of a crew was a question of law. This Court held that (p. 258):

> "The word 'crew' does not have an absolute unvarying legal significance."

and at some length explained its various meanings. This, it is respectfully submitted, is not true with respect to the word "employee" which has a well established and conventional meaning under the common law and statutory enactments.

There appears to be no conflict in the decision of the Court below with the decision of the 8th Circuit in *National Labor Relations Board v. Blount*, 131 F. (2d) 585—318 U. S. 791, cited by counsel.

An analysis of the cases of *Shields v. Utah Idaho Central R. Co.*, 305 U. S. 177, and *Rochester Telephone Corporation v. U. S.*, 307 U. S. 125, and *Sunshine Anthracite Coal Co. v. Adkins*, 310 U. S. 381, does not disclose any departure by the Court from the rule or principals herein contended for.

For example, the case of *Shields v. Utah Idaho Central R. Co., supra*, involved the status of respondent as to whether or not it was an inter-urban electric railway, the Act providing that if it was, it was excepted from the provisions therefrom. There appeared to be no controversy respecting the meaning of the term "inter-urban

electric railway", hence the question to be determined was purely a question of fact. The Court stated at pages 180, 181:

> "As Congress was free to establish the categories which should be excepted, Congress could bring to its aid an administrative agency to determine the question of fact whether a particular railroad fell within the exception, and Congress could make that factual determination after hearing and upon evidence, conclusive."

Again in the case of *Sunshine Anthracite Coal Co. v. Adkins; supra*, we find the question turned on whether or not coal being mined by the appellant was "bituminous coal", the answer to which in turn determined whether or not Adkins came within the purview of the Bituminous Coal Act. The term "bituminous coal" was definitely defined by the Act and as in the *Shields* case the meaning of the term did not appear to be in question. The Court held in effect that Congress could delegate to the Commission the determination of the question of fact, and (p. 400):

> "That guide (the act and definitions) is *sufficiently precise*[12] for an intelligent determination of the ultimate questions of fact by experts."

It could scarcely be contended that the definition of the word "employee" in the National Labor Relations Act is "sufficiently precise" or precise at all, save as it clearly established the intent of Congress to use the word in its customary, conventional and legal sense.

It is respectfully submitted that no conflict of decisions results from the decision of the Court below in the case at bar.

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[12] Emphasis ours.

POINT II.

Evidence to Justify Findings of an Administrative Body Means Substantial Evidence.

The rule that the evidence adduced must be substantial evidence or reasonably persuasive evidence—that a mere scintilla of evidence is insufficient—is well established by a long line of decisions of this Court. Thus, in the case of *National Labor Relations Board v. Columbia Enameling & Stamping Co.*, 306 U. S. 292 (decided February 22nd, 1939), Mr. Justice Stone, after completely analyzing the evidence adduced at the original hearing respecting the sufficiency thereof to justify the order of the Board requiring the discharge of certain employees and directing respondent to discontinue refusing to bargain collectively, in connection with his discussion of Section 10 E of the Act—

> "The findings of the Board as to the facts, if supported by evidence, shall be conclusive"

stated at page 299 as follows:

> "But as has often been pointed out, this, as in the case of other findings by administrative bodies, means evidence which is *substantial*, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred." (Emphasis supplied.)

Various cases were cited, including *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, wherein the Court stated, at page 300:

> "Substantial evidence is *more than a scintilla*, and must do more than create a suspicion of the fact to

be established. It means such relevant evidence as a reasonable mind might accept as *adequate to support a conclusion* . . . . and it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury." (Emphasis supplied.)

Again, in the case of *National Labor Relations Board v. Boss Manufacturing Co.*, 107 Fed. (2d) 574 (decided November 7th, 1939 in the Circuit Court of Appeals, 7th Circuit), we find the same doctrine pronounced.

The case came before the Court upon petition of the Board for an order for enforcement. The Court thoroughly analyzed the evidence, and in discussing the sufficiency thereof to justify the findings in question, the Court stated, at page 578:

> "True it is, the findings of the Board are conclusive *if supported by the evidence*—29 U. S. C. A., paragraph 160—but it is a *question of law* as to whether there is sufficient evidence to support the Board's findings of fact." (Emphasis supplied.)

Citing sundry cases, including *Consolidated Edison* (*supra*), and *Columbian Enameling & Stamping Co.* (*supra*), and quoting with approval from the *Columbian* case the same provision hereinabove quoted by this respondent.

National Labor Relations Board v. Sun Shipbuilding & Dry Dock Co., 135 Fed. (2d), page 15 (decided by the Circuit Court of Appeals, 3rd Circuit, March 31st, 1943). In discussing the question of the sufficiency of

evidence to support the findings of the Board, the Court stated, after analyzing the evidence, as follows (p. 25):

> "While it is for the Board, therefore, to find the facts and to draw material inferences from the evidence (citing various cases) it is for a reviewing Court to say *whether the Board's findings are supported by substantial evidence*, and whether its conclusions are reasonably inferable from the evidence which it accredited." (Emphasis supplied.)

In this case the Court found that the evidence was not sufficient to sustain the findings.

The same doctrine is pronounced in the case of *National Labor Relations Board v. Goshen Rubber & Manufacturing Co.*, 110 Fed. (2d) 432 (decided February 24th, 1940, in the Circuit Court of Appeals, 7th District), wherein the Court again declares that the findings must be supported by substantial evidence acceptable to a reasonable mind as adequate to support a conclusion—citing the *Consolidated Edison* (*supra*) case, and sundry other cases.

Also see the following cases, holding to like effect:

National Labor Relations Board v. Sterling Electric Motors, 109 Fed. (2d) 194;

Gunning v. Cooley, 281 U. S. 90.

POINT III.

The Word "Employee" Was Used by Congress in the National Labor Relations Act in Its Long Established and Conventional Sense.

Section 2(3) of the Act defines the word "employee" as follows:

> "The term 'employee' shall include any employee and shall not be limited to the employees of a particular employer unless the Act explicitly states otherwise . . . ." (exceptions and inclusions follow—not of importance in this case).

It is significant that acting under authority conferred upon it by the Act respecting the making of rules and regulations, the Board in its rules and regulations, 29 U. S. C. A. 561, Sec. 201.1, merely stated in defining the word "employee" that such word:

> ". . . as used herein shall have the meaning set forth in Section 2 of the National Labor Relations Act."

Reaffirming, as it were, the intention to use such word in its ordinary, long established and conventional sense.

It is respectfully urged that the so-called "definition" of the word "employee" in the Act neither added to nor detracted from the conventional use of that word.

Petitioner would enlarge the conventional and well-established meaning of the word "employee" by having it include all persons involved who

> ". . . function in a realistic economic sense as employees. . . ." [R. 1847.]

To integrate such a provision with the definition of "employee", declared by Congress, would be to nullify Congressional intent and would result in administrative rather than Congressional made law. That the term "employee" has a well established and conventional meaning and refers to a *legal* relationship, can scarcely be questioned.

The primary purpose for the enactment of the National Labor Relations Act was to regulate labor relations, *i. e.*, the relationship between employers and employees. The conclusion is almost irresistible that Congress, had it intended the Act to embrace employees other than those denoted by the use of the word in its common and conventional sense, would assuredly, in framing the definition of such word, expressed such intent.

Thus, in the case of *Jones v. Goodson* (10 C. C. A.) 121 F. (2d) 176, 180, the Court states:

> "It must be presumed that Congress was cognizant of its well-established principles at the time of the enactment of the statute and that if different guides were intended for ascertaining whether the relationship of employer and employee existed between parties in the application of the statute, appropriate language would have been used to indicate such purpose. There is nothing in the act or its legislative history to indicate such an intent."

In determining the meaning of the word "employee" under the Federal Employers Liability Act (U. S. C. A. Title 45, Sec. 51) in the case of *Robinson v. Baltimore & Ohio R. R. Co.*, 237 U. S. 84, at 94, 59 L. Ed. 849, at 853, the Court stated:

> "We are of the opinion that Congress used the words 'employee' and 'employed' in the statute in

their natural sense and intended to describe the conventional relation of employer and employee."

Similar pronouncement was made by the Court in construing the term "employment" as used in the Federal Social Security Act of 1935 in the case of *Kentucky Cottage Industries v. Glenn*, 39 Fed. Supp. 642, at 645.

Again in the case of *McDonald v. United States* (8 C. C. A.) 89 F. (2d) 128, at 133, the Court states:

". . . It is well settled that when a statute uses words whose meaning under judicial decisions has become well known and well settled it *will be presumed*[13] that the legislature used such words in the sense justified by long judicial sanction."

Sanborn v. Commissioner (8 C. C. A.) 88 F. (2d) 134, at 137, certiorari denied, 301 U. S. 700, quoting from the Opinion:

". . . 'The plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity of an acute and powerful intellect would discover' has received the approval of the Supreme Court and is now well settled."

This pronouncement would appear to be particularly applicable to the contention of petitioner that the word "employee" should be so construed as to bring within its meaning all persons who "function in a realistic economic sense as employees." It is earnestly urged that such a contention should not be upheld.

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[13]Emphasis ours.

Conclusion.

It is submitted that the petition for a Writ of Certiorari should be denied for the reason that there is no conflict of decisions between the case at bar and the cases relied upon by petitioner as reflecting such conflict.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1943.
No. 337.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

STOCKHOLDERS PUBLISHING COMPANY, INC.,

Respondent.

BRIEF OF RESPONDENT STOCKHOLDERS PUBLISHING COMPANY, INC.

Respondent Stockholders Publishing Company, Inc., publisher of the DAILY NEWS at Los Angeles, California, respectfully submits herewith its Brief in support of the opinion and decision of the United States Circuit Court of Appeals.

Opinion Below.

The opinion of the Circuit Court of Appeals for the Ninth Circuit is reported in 136 Fed. (2d) 608. [R. 1843 et seq.][1]

[1]Reference to pages of the Record will be herein designated as "R."

Jurisdiction.

The National Labor Relations Board's[2] Petition for Writ of Certiorari was filed September 9, 1943, and granted on October 25, 1943. Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10(e) and (f) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., sec. 151 *et seq.*).

Statement of Case.

1. RESPONDENT'S ORGANIZATION—BUSINESS:

Respondent STOCKHOLDERS PUBLISHING COMPANY, INC., is engaged in the business of publishing a daily (except Sunday) newspaper at Los Angeles, California, and has been so engaged for more than seventeen years last past. It publishes a twenty-four hour newspaper which was formerly known as the Daily News and Evening News. [R. 61, 62.] It is now known as the "DAILY NEWS" but will hereinafter be referred to, for brevity, as "THE NEWS." Its circulation within the State of California was 195,191 in March of 1940. [R. 62.]

2. MANNER OF DISTRIBUTION:

With respect to street distribution of its newspapers through newsboys, respondent's operations are as follows:

It *wholesales*[3] its papers to sundry distributors who are known as district men.[4] These men purchase papers from respondent and sell them to various newsboys, news stands, confectionery stores and drug stores. [R. 1127, 1128.]

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[2]The National Labor Relations Board will hereinafter be referred to as the "Board", and the National Labor Relations Act will hereinafter be referred to as the "Act".

[3]All emphasis in this Brief ours.

[4]They are sometimes loosely referred to as district managers.

While the price at which the paper is to be sold to the public is established by respondent and appears on its masthead, the district man has certain discretion with respect to the resale price, it appearing that he sells his papers to the newsboys at one price and to drug stores, sweet shops and news stands at a different price. [R. 1127.] The district man's profit is thus the difference between his purchase price and his sales price of the papers. [R. 1130.]

Respondent contends that neither the district men nor the newsboys are its employees.

3. THE REPRESENTATION PROCEEDINGS:

On June 8, 1940, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., herein referred to as "the Union," filed its Second Amended Petition for Investigation and Certification of Representatives under Section 9(c) of the Act, alleging *inter alia*, that it was the appropriate bargaining unit for a certain group of newsboys alleged to be employees of respondent. [R. 30, 31.]

One June 5, 1940, such proceeding was consolidated with three other proceedings under Section 9(c) involving three other Los Angeles daily newspapers. [R. 28.][5] Respond

[5]The four cases so consolidated were consolidated solely for the purpose of a hearing before the Trial Examiner [R. 14, 15] and not upon the theory or assumption that evidence applicable to one newspaper would be deemed applicable to another newspaper. The Board in its Decision and Order of March 30, 1942, which is here under review, stated in this respect as follows:

> "In our present decision as well as the Board's decision in the *representation* proceeding hereinafter referred to, *we have not considered evidence with respect to one publisher as applicable to any other publisher.*" [R. 456, Footnote.]

Thus, while the record is replete with stipulations between counsel for the Board and counsel for the various respondents, to such effect, it becomes unnecessary to make reference thereto in view of the foregoing pronouncement in the decision.

ent filed a motion to dismiss the petition on the grounds, *inter alia,* that the Board was without jurisdiction, and that the newsboys were not employees of respondent. [R. 42.] The motion was denied. [R. 79, Footnote 4.] Respondent also answered said petition denying, amongst other things, the existence of the relationship of employer and employee between respondent and the newsboys, whom the Union claimed to represent, and denied that such persons constituted an appropriate bargaining unit. [R. 46.]

Upon the issues thus presented, a hearing was held before the Board's Trial Examiner, and the Board thereafter issued its Decision and Direction of Elections dated January 9, 1941 [R. 76], by which it ordered that an election be conducted in the newsboy group (comprising the alleged appropriate bargaining unit) to determine the matter of representation by the Union. Such election was held on the 14th day of May, 1941, over the objection and challenge of respondent. [R. 157.]

Subsequently petitioner filed its Objection to the Election Report. [R. 165.] Both the challenge and the objections to the report of elections were overruled. [R. 158, 179.] Thereafter the Board filed its Supplemental Decision and Certification of Representatives [R. 187], certifying that the Union had been designated by a majority of the newsboys as their bargaining representative. [R. 195.][*]

4. THE COMPLAINT CASE:

On November 21, 1941, the Union filed a charge against respondent alleging unfair labor practices within the meaning of Section 8, Subsections 1 and 5 of the Act [R. 383], which was followed by the issuance of a complaint by the

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[*]The proceedings referred to above under No. XX-1-R-927 and No. 1923 are herein referred to as the "Representation Proceedings."

Board under date of December 5, 1941 [R. 378], alleging *inter alia*, that the Union was an appropriate unit for the purpose of collective bargaining; that respondent had refused to so bargain and was, therefore, guilty of unfair labor practices. [R. 378.] Respondent filed an answer denying, amongst other things, that the newsboys were respondent's employees; that the bargaining group referred to in the complaint was an appropriate bargaining unit. [R. 388.]

On December 11, 1941, respondent and the Union and the National Labor Relations Board entered into a written stipulation to the effect that there had been no material change in respondent's business since the admission in evidence of Board Exhibit No. 10 on June 19, 1940 [R. 397, 398], and stipulated that if all witnesses called by the parties at the hearing held at Los Angeles between June 10, 1940, and June 27, 1940, were recalled to testify as of the date of such stipulation, that the testimony of such witnesses would be substantially the same. [R. 398.] The stipulation further recited that respondent had failed to comply with the request of the Union to bargain collectively.[7]

Thus, the retaking of testimony in the Representation case was obviated and no further proceedings (except cer-

[7] A portion of this stipulation reads as follows [R. 399]

> "At this conference the Board, the respondent, and the Union were each represented; and the representatives of the respondent in the presence of the representatives of the Union stated in effect that the respondent, although willing to continue its long established policy of meeting and dealing with representatives of the newsboys distributing and selling its newspapers, was not willing to bargain collectively with the Union under the aforementioned certification."

In this stipulation respondent reserved *inter alia* all of its rights with respect to its right to maintain that the newsboys were not employees of respondent, and with respect to its right to controvert the sufficiency of the alleged appropriate unit. [R. 399, 400.]

tain formal requirements) were necessary in the Complaint case prior to submission to the Trial Examiner.

Subsequently the proceeding involving this respondent and the proceeding involving Hearst Publications, Incorporated (Los Angeles Examiner Department)—being two of the four newspapers involved in the consolidated representation proceedings, were consolidated. [R. 364.]

Thereafter, the Trial Examiner filed his intermediate report dated January 7, 1942 [R. 401], to which respondent filed exceptions [R. 442], and orally argued the issues before the Board at Washington, D. C. [R. 454.] On March 30, 1942, the Board rendered its Decision and Order whereby respondent was directed to cease and desist from its refusal to bargain collectively with the Union, and was ordered to bargain collectively upon the Union's request.

Respondent thereupon filed in the United States Circuit Court of Appeals for the Ninth Circuit its Petition for Review of such final Order of the National Labor Relations Board pursuant to Section 10(f) of the National Labor Relations Act (49 Stat. 449; 29 U. S. C. sec. 151 *et seq.*).

After the filing of briefs by the respective parties and oral arguments, the case was submitted and thereafter and on the 10th day of June, 1943, the Circuit Court set aside the orders of the Board directed to respondent, finding amongst other things, that there was no substantial evidence in the record supporting the Board's findings that the newsboys were respondent's employees, which Order and Opinion is reported at 136 Fed. (2d) 608. [R. 1843.]

The Board thereupon filed a Petition in this Court for a Writ of Certiorari which was granted as hereinbefore referred to.

Questions Involved.

There are two basic questions involved in this proceeding:

1. WERE THE NEWSBOYS DESIGNATED IN THE CLAIMED BARGAINING UNIT AND WHO WERE ENGAGED IN STREET SALES OF THE NEWS, EMPLOYEES OF RESPONDENT?*

(A) IS THERE ANY SUBSTANTIAL EVIDENCE IN THE RECORD SUSTAINING THE BASIC FINDINGS OF THE BOARD AND ITS CONCLUSIONS AND DECISION, FINDING AND HOLDING THAT NEWSBOYS ENGAGED IN STREET SALES OF RESPONDENT'S NEWSPAPERS WERE ITS EMPLOYEES?

(B) WHAT IS THE MEANING OF THE WORD "EMPLOYEE" AS USED IN THE ACT?

(C) IS THE DETERMINATION OF SUCH MEANING A QUESTION OF LAW AND, THEREFORE, A MATTER FOR JUDICIAL DETERMINATION OR IS IT A QUESTION OF FACT FOR DETERMINATION BY AN ADMINISTRATIVE BODY?

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*The record discloses the fact that the contention that such newsboys were not employees of respondent was repeatedly urged from the very commencement of the "Representation" proceeding, continuing to the conclusion of the "Complaint" case:

(See Motion to Dismiss Petition for Investigation, etc. [R. 42]; Answer of Respondent to Second Amended Petition for Investigation, etc [R. 47]; Respondent's Challenge to Election [R. 148, 149]; Objections of Respondent to Election Report and the Conducting Thereof [R. 165, 166]; Respondent's Motion to Dismiss Complaint [R. 384 at 385]; Answer to Complaint [R. 388 at 391]; Exceptions of Respondent to the Intermediate Report, etc. [R. 442 at 450].)

2. WAS AN APPROPRIATE BARGAINING UNIT, COMPOSED OF RESPONDENT'S ALLEGED EMPLOYEES, ESTABLISHED?

(A) IS THERE SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE FINDINGS OF THE BOARD OF THE EXISTENCE OF AN APPROPRIATE BARGAINING UNIT CONSISTING OF EMPLOYEES OF RESPONDENT?[9]

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[9]Likewise the record shows with respect to this question that respondent has consistently contended that no appropriate bargaining unit was established.

(Answer of Respondent to Second Amended Petition for Investigation, etc. [R. 47]; Answer of Respondent in Complaint case [R. 388 at 389]; Exceptions of Respondent to Intermediate Report, etc. [R. 442 at 443 and 444].)

Summary of Argument.

Point I.

(a) THERE IS NO SUBSTANTIAL EVIDENCE SUPPORTING THE FINDING OR CONCLUSION OF THE BOARD THAT THE NEWSBOYS ENGAGED IN STREET SALES OF THE NEWS AND WITHIN THE CLAIMED BARGAINING UNIT WERE EMPLOYEES OF RESPONDENT.

(b) THERE IS NO SUBSTANTIAL EVIDENCE SUPPORTING THE FINDING OR CONCLUSION OF THE BOARD THAT THE DISTRICT MEN (BEING THOSE PERSONS WHO SOLD PAPERS TO AND DEALT WITH THE NEWSBOYS) AND WHO BOUGHT AND SOLD AT WHOLESALE RESPONDENT'S NEWSPAPERS, WERE EMPLOYEES OF RESPONDENT.

(c) THERE IS NO SUBSTANTIAL EVIDENCE SHOWING CONTROL BY RESPONDENT OVER THE NEWSBOYS.

(c-1) SUBSTANTIAL EVIDENCE AS APPLIED TO FINDINGS IN (a) REPRESENTATION PROCEEDINGS, AND (b) COMPLAINT CASE.

(d) THE TERM "EMPLOYEE" AS USED IN THE ACT SHOULD BE GIVEN ITS LEGAL AND CONVENTIONAL MEANING.

(e) THE DETERMINATION OF THE MEANING OF THE WORD "EMPLOYEE" AS USED IN THE ACT IS A LEGAL QUESTION, AND HENCE A FUNCTION OF THE COURT AND NOT OF AN ADMINISTRATIVE BODY.

Point II.

THERE IS NO SUBSTANTIAL EVIDENCE SUPPORTING THE FINDING OR CONCLUSION OF THE BOARD THAT THE CLAIMED BARGAINING UNIT FOR THE ALLEGED EMPLOYEES OF RESPONDENT WAS AN APPROPRIATE UNIT.

THE RULE FIXING AND BASIS FOR DETERMINING ELIGIBILITY FOR MEMBERSHIP IN THE UNION IS DISCRIMINATORY, ARBITRARY AND CAPRICIOUS.

ARGUMENT.

POINT I—(a) AND (b).

(a) There Is No Substantial Evidence Supporting the Finding or Conclusion of the Board That the Newsboys Engaged in Street Sales of the News and Within the Claimed Bargaining Unit Were Employees of Respondent.

(b) There Is No Substantial Evidence Supporting the Finding or Conclusion of the Board That the District Men (Being Those Persons Who Sold Papers to and Dealt With the Newsboys and Who Bought and Sold at Wholesale Respondent's Newspapers) Were Employees of Respondent.

The testimony produced with respect to this respondent is comparatively brief. Consequently, before proceeding with a discussion of the applicable law we will briefly analyze and comment upon such testimony.

Analysis of Evidence.

There were only *four* newsboys and *two* district men called as witnesses by the Board in connection with its case against respondent.

They were Frank Benjamin Smith, Edward Victor Smith, James V. Apice, Thomas Hilliard Ash (all newsboys), and Sidney Glenn Murray and Isaiah Jacob Moore (both district men). Dutton O'Brien, circulation manager for respondent, also gave certain brief testimony.

The record shows that certain newsboys regularly sold both the "Herald and Express" and the News [R. 1066]. In a few instances witnesses called by the Board in connection with the proceeding involving the respondent

Hearst Publications, Incorporated (Los Angeles Evening Herald and Express Department) incidentally gave some testimony respecting their dealings with district men selling respondent's newspaper. To such extent we will refer to such testimony.

The testimony directly involving respondent Stockholders Publishing Company, Inc., is reported commencing at R. 1065 and continuing to R. 1145.

The testimony of these witnesses will be analyzed with respect to extent, character and nature of respondent's alleged control, and other alleged indicia of the employer-employee relationship.

Frank Benjamin Smith (newsboy) testified (on direct examination) that the "News" (respondent) supplied him with two racks; that a district man of the News told him to put the papers in the racks [R. 1098] and at what corner he was to sell and the hours he was to work [R. 1099].[10] He testified on cross-examination to extended experience in selling newspapers, and that he knew when he was supposed to start selling papers, what the racks were to be used for, and how they should be used, and that he needed no instructions with respect thereto. That he paid the district man for his copies of the paper at the rate of two cents, paying for them after he had sold them [R. 1102].

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[10]A realistic approach to the question of "time to work" should be adopted. Nothing is more perishable than a newspaper, and to contend that because a boy selling newspapers is "required" to sell the various editions at or about the time they first appear on the street for sale, that such requirement is an evidence of authority or control, in our opinion is not meritorious. It goes without saying that any boy who proposed to try to earn money out of the sale of newspapers would make it his business to find out when the papers were ready for sale and where he could get them without finding it necessary to be "instructed" or "ordered" in such respect.

That he received full credit for all returns; that the racks helped him sell his papers, and that when he first came to work he already knew the time that the first edition of the newspaper appeared on the street [R. 1105].

Comments: The testimony of this witness falls far short of evidencing that "complete control" required by the law to establish the employer-employee relationship. There was no evidence offered by this witness or any other witness in respondent's case indicating or even inferring that the alleged instructions given or the alleged authority exercised, was typical with respect to other newsboys selling respondent's newspapers.

Edward Victor Smith (newsboy) testified on direct examination that the News district man (Lou Law) placed him on a new corner and told him that

> "there would be a man there to show me around where the racks was and where I was to go. That was all there was to it." [R. 1109.]

On cross-examination he testified he also sold the Examiner and the Times, making a profit therefrom; that he bought them at wholesale "out of my own pocket" [R. 1111]. That he made changes as to the amount of his order to the News district man, and that he usually told the district man the day before how many papers he would want [R. 1111-1112]. He also testified that he was engaged in another business—*operating a flower market*—and that therefore he arranged for the delivery of his papers at a different corner because it was more convenient for him [R. 1112].

Comments: The testimony of this witness offers no evidence of any real control. On the contrary he stated that he made changes in the amount of his order, that he

had the place for delivery of his papers changed at his own request because it was more convenient to him in operating another business.

James V. Apice (newsboy) testified on direct examination that he obtained his corner from a friend. *That he had three boys working for him* [R. 1118]. That his district man told him to "try to keep the boy out there" (a traffic spot) at a certain time [R. 1120]. That the district man said nothing else [R. 1120] except about the manner of displaying (or holding) the papers. This witness was not cross-examined. No evidence was adduced to show that he was a *full time newsboy*, or for that matter that he sold any particular editions or during what hours or how many days a week he worked.[11]

Comments: Practically all of the testimony of this witness indicated *his own control of his own business.* He testified that he obtained his corner from a friend and that he had three boys working for him. There was no testimony offered respecting any other matter or thing except that the district man had told him to "try to keep the boy out there" (a traffic spot) and respecting the manner in which papers were to be displayed.

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[11]Respondent and the Board entered into the following stipulation respecting the meaning of the term "full time" newsboys [R. 141]:

> "With respect to the News, the term 'full time' newsboy means a newsboy who sells to the general public, Five, Six, Eight, Nine and Ten Star editions, or Six, Eight, Nine and Ten Star editions of the News, five or more days a week, and means a newsboy who sells the Four Star edition and previous editions of the News for a minimum of four hours per day between the hours of 4:00 o'clock A.M. and 10:00 o'clock A.M., five or more days a week."

Thomas Hilliard Ash. (Newsboy.) Testified that he was also (in addition to being a newsboy) a checkman[12] and operated at Wilshire and Westlake, and that as a "checkman" he counted out newspapers to one other newsboy.

Comments: This witness having offered no material testimony, comments are unnecessary with respect to his testimony.

Sidney Glenn Murray. (District Man.) Testified that he was a district man handling the Four Star edition of the News, that he supplied ten newsboys, some school boys, some men [R. 1114]. Queried as to the price at which he supplied the newspapers to the newsboys, he stated:

> "Two cents apiece, with the exception of those that I give a little bonus, but that personally is between me and the boys. That don't concern the Company at all." [R. 1115.]

Further quoting from the testimony of this witness, at [R. 1115-1116]:

> "Q. And so far as the price at which you furnished papers to the newsboys is concerned, is that fixed by the company or by you? A. *That is fixed by me.*"

Comments: It should be particularly observed that this witness (one of two district men handling respondent's newspapers) called by the Board, testified *that he fixed the*

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[12]The record discloses that respondent employed certain boys for the restricted purpose of delivering or counting out newspapers to other boys. That such boys were commonly referred to as "check men". They were admittedly carried on respondent's payroll, Social Security was deducted from their compensation, and there is no issue with respect to their employment by respondent for this restricted purpose. [R. 1089-1090-1637.]

price at which he sold his newspapers to the newsboys and gave them bonuses out of his own pocket.

Isaiah Jacob Moore. (District man.) Testified that he was a district man, supplying ten all day boys and twenty or thirty boys that worked after school [R. 1126]. That he serviced approximately twenty-two news stands [R. 1127]. That he bought his papers at wholesale from the News and sold them to the boys at one and three-quarters cents each, and to the news stands at two cents each [R. 1127]. That the news stands comprised sundry businesses such as confectionery stores, sweet shops and drug stores [R. 1128]. On redirect examination Mr. Moore testified that he received a "minimum guarantee."

Comments: These were the only two district men called. It will be observed that one district man sold his newspapers to newsboys at one price *which was fixed by him*, and another district man sold his newspapers to newsboys at another price fixed by respondent, but that he (Moore) sold his newspapers to persons other than newsboys at an increased price. It is earnestly contended that there is no substantial evidence adduced by the testimony of these two district men justifying the conclusion or finding that the district men were employees of respondent. Particularly is this true when considered in the light of the only other testimony in the record offered with respect to the status of the district man.

This testimony was offered by Mr. Dutton F. O'Brien, circulation manager for respondent, who testified [R. 1130]:

"Q. I will ask you whether or not the Stockholders Publishing Company, or the News, fixes the price at which its district men sell the paper or may

sell the papers to newsboys or news stands? A. *It does not.*

Q. Is that function of fixing the price at which the paper is sold to the newsboys or to the so-called wholesalers and to the news stands *entirely in the discretion of the district man*? A. It is.

Q. You sell—by 'you' I mean the Stockholders Publishing Company sells its papers to these district men at a certain wholesale price, is that correct? A. Yes.

Q. And they in turn sell to the news stands and to the news boys, is that correct? A. That is right.

Q. Their (the district men) profit is the difference between what they buy for and what they sell for, is that correct? A. Yes.

Q. And it is discretionary with them as to their selling price? A. Yes."[13]

In so far as the direct case against respondent is concerned, the foregoing constitutes a condensed statement of

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[13]Mr. O'Brien further testified on direct examination by the Board, as follows [R. 1082]:

"Q. When do they (district men) make their return of collections from street sales? A. Our men work *on a wholesale basis;* they pay their bills the next morning for the preceding day's papers which are furnished to them."

Further, Mr. O'Brien testified [R. 1085] when queried with respect to certain conversations he had had with a newsboys' committee with reference to "the price at which the newsboys received the copies of the News that they sell," as follows:

". . . . . I don't remember what specific questions he (Pat Comorre) may have asked, nor what my answers might have been, but I do remember in substance that I referred the committee and its members to the district managers (district men) *who have full control over the prices at which they sell to the newsboys.*"

all material testimony offered bearing upon control by respondent over newsboys or district men selling its papers.

In the case involving the "Herald-Express," the Board called certain newsboys who also sold respondent's newspaper, and who in some instance testified with respect to alleged instructions or suggestions given them by the district men selling respondent's papers, viz:

Sid Faber. (Newsboy.) Testified that he had an understanding or that he was told by a News district man how the respective papers (Herald and News) were to be held when being offered for sale [R. 725-726].

Harry Relish. (Newsboy.) Testified that the News district man told him he would "have to be all the time on this (corner) spot because we want to sell papers" [R. 733]. He further testified, however, that he had been away from his corner, due to illness, sometimes two or three hours a day, and as frequently as twice a week, and that during such times he had procured *his own relief man* [R. 738].

Queried as to why he had been staying off the corner, he testified [R. 737]:

> "Well, only at the time when I had to go away. For instance, to get treatments, when I was sick. I put a relief man on. I put a relief man on."

He further testified that he used his own money for the *purpose of purchasing the corner on which he sold papers*, and for the purchase of magazines which he handled in addition to newspapers [R. 736].

It is respectfully submitted that such testimony, whether considered separately or cumulated with other testimony

herein adverted to, offers no substantial evidence of "control."

Arthur Steuart. (Newsboy.) Testified that on several occasions he was instructed by the News district man as to how to carry the News [R. 750] and with respect to the use of racks furnished by the News [R. 756]. On cross-examination he testified that he knew what the racks were for without being told; that he could tell by just looking at them what they were for, and that the News district man did not give him any instructions as such, but suggested it would be a good plan to keep a paper in the rack [R. 776-778].

He also testified that the News district man regulated the orders, but did not tell him how many papers he should have, and gave him full "returns" [R. 789].

He further testified [R. 788] that he sold the Examiner and the Times and made a profit of two cents on each sale, and that he handled sundry other publications, including Saturday Evening Post, Life, Liberty, Look and Collier's.[14]

Comments: The only testimony offered by this witness with respect to this respondent bearing on alleged control, was with respect to the manner of displaying or holding the newspaper and with respect to the use of the racks. In this respect he testified that he received no instructions as such, but merely suggestions. Further comment respecting the method of holding the papers will be made later in this analysis.

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[14]Many of the newsboys testified that they handled sundry publications.

David Kadesh. (Newsboy.) Testified that the News district man had given him instructions with respect to the use of the News racks. The nature of the instructions were not further disclosed [R. 811]. He further testified that he knew what the News racks were for; that he needed no instructions respecting the same [R. 814].

Gene LeRoy Alley. (Newsboy.) Testified that the News district man told him how the News should be handled (*i. e.* how to hold or display them) [R. 819] and that he was told by a district man to go ahead and handle the News even though he had been told contrariwise by a Herald district man [R. 820]. That he was furnished certain advertising placards by the News [R. 822].

Philip Spampinato. (Newsboy.) Testified that he was told how to hold the paper by a News district man [R. 832, 833]. That he was told by a News district man to put certain advertising placards on a box [R. 835]; that the placards helped him sell the papers by advertising certain features [R. 842].

Sam Kahn. (Newsboy.) Testified that he used racks belonging to the News and that the district man from time to time furnished advertising placards. That he was told to put them into the racks [R. 903]; that the use of the racks and the placards helped him sell the papers [R. 909].

The sparsity of any material testimony bearing on control offered by the four witnesses last named (called in the Herald-Express case) obviates the necessity of any comments thereon.

Summation of Testimony.

After a careful examination of the record we find no testimony other than that referred to in the foregoing analysis which was offered by the Board bearing upon control allegedly exercised over newsboys selling respondent's newspaper, or bearing upon any control of respondent over the district men handling at wholesale, respondent's newspapers.[15] Summed up, and accepting all of the testimony at its face value, such testimony adduced merely shows:

(a) That the newsboys were furnished with placards (advertising matter) and display racks without cost to them. That in some instances they were instructed by the district man *who was not respondent's employee*, how to use them.

(b) That they were told by a district man (not an employee of respondent) how to handle or hold or display the News with relation to the handling, holding or displaying of the Herald-Express.[16]

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[15]Manifestly, unless it is established by substantial evidence in the record that district men buying and selling at wholesale respondent's newspapers were employees of respondent, the newsboys could not be held to be employees of respondent. Such "instructions" as were given to the newsboys and such "control" as was exercised over them emanated exclusively from district men.

[16]It, however, appears from Stockholders' Exhibit No. 3 [R. 493] that the newsboys did not know what was expected of them in this respect, and decided to "iron" out the problem themselves. A part of the exhibit, which was a notice of a meeting of the Newsboys' Union, follows:

"How shall a newsboy hold the Herald & News?

"Now that the day newsboys are selling both the Herald-Express and the Evening News, just what is expected of them by the publishers?

"There have been a lot of rumors and each newsboy seems

(c) That the newsboys were told by such district men where they could sell their papers and in some instances the hours during which they were expected to sell; but in some instances these spots or corners were the subject of barter and sale.

That in *one* instance a newsboy's selling location was transferred by a district man (not an employee of Respondent). However, it also appears that in another instance the corner was "bought" by a newsboy.

(d) That with respect to this respondent the newsboys had the right to regulate their own orders.[17]

It is here proper to comment on the fact that inasmuch as the newsboys selling the News were allowed *full returns* on unsold newspapers [R. 789, 471], the question as to whether or not the district men determine the number of newspapers which were left with the newsboys from time

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to have a different opinion on the matter. Let's get to the bottom of this problem!!

"This meeting is being called for the purpose of setting a standard guide for all newsboys and to establish a permanent arrangement on this matter."

This pamphlet, issued by the Union, clearly shows that no definite or understandable instructions had ever been given, but that per *contra*, the newsboys themselves proposed to settle their own problems in their own way and recognized no right of control by the district men.

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[17]Edward Victor Smith [R. 111-112], newsboy selling respondent's papers, testified in this respect as follows:

"Q. And do you give your district man some idea as to how many papers you may want from time to time, or do you leave that entirely to him? A. Several mornings I have to make a different—I have to change.

Q. Then you have that within your own control as to how many you want to order? A. I usually tell him the day before.

Q. As to how many you will want? A. Yes, sir."

to time could have no possible bearing on the matter of respondent's alleged control of the newsboys. It is obvious that so long as the newsboy had this right of "full returns", that the giving to him by the district man of more papers than he might sell was not the exercise of any control whatsoever. Such practices are common throughout the country in the handling of magazines and various other publications.

While there is evidence (testimony of Patrick Comorre) [R. 862, 863] that there were between 650 and 700 newsboys selling the Herald-Express and the News, and an estimate by Mr. Patrick Comorre that there were 210 to 212 of what "I considered was full time newsboys and checkmen" [R. 864], and while the list of checkmen furnished by respondent [R. 1091] contained approximately 110 names, the findings of the Board hereinafter referred to are predicated solely on the testimony of these few isolated cases, and no testimony was offered to show that such instances were typical of the operations between district men and newsboys.

There is no evidence in the record showing that the newsboys, comprising the alleged appropriate unit, were carried on the payroll of respondent, or that respondent paid Social Security upon them. Nor is there any testimony in the record showing any contact whatsoever between respondent and the newsboys by or through respondent's employees, agents or representatives, nor showing that any instructions were given or control exercised by respondent over such newsboys. There is no evidence showing that respondent kept any list or record of the names of newsboys selling its papers or the addresses or locations at which the papers were sold by such newsboys. All "hiring" was done by the district man.

POINT I(c).

There Is No Substantial Evidence Showing Control by Respondent Over the Newsboys.

Evidence upon which the Board's Findings are predicated must be substantial evidence. The Findings of the Board are not conclusive unless supported by substantial evidence. The right to determine whether or not the evidence adduced is substantial is the prerogative of the Court.

National Labor Relations Board v. Columbia Enameling and Stamping Company, 306 U. S. 292, 299-300:

"Section 10(e) of the Act provides: '. . . The findings of the Board as to the facts, if supported by evidence, shall be conclusive.' But as has often been pointed out, this as in the case of other findings by administrative bodies, means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred (citing cases). Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. 'It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'"

Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, 229;

National Labor Relations Board v. Virginia Electric & Power Co., 314 U. S. 469, 476;

Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board, 301 U. S. 142, 147;

National Labor Relations Board v. Sun Shipbuilding & Dry Dock Co. (3 C. C. A.), 135 F. (2d) 15, 25.

It is well recognized that the nature, extent, power and right of control *over the means and methods of performance* is the most important element for consideration in determining the existence of the employer-employee relationship. As stated in

> *Standard Oil Co. v. Anderson*, 212 U. S. 215, 222, 53 L. Ed. 480, 484 (1909):
>
> "Here we must carefully distinguish between authoritative direction and control and mere suggestion as to details or the necessary co-operation, where the work furnished is part of a larger undertaking. These principles are sustained by the great weight of authority. . . ."

There are numerous State Court decisions involving this question.[18] The leading case in California is

> *New York Indemnity Company v. Industrial Accident Commission*, 213 Cal. 43, 1 Pac. (2d) 12.

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[18] *Bohanon v. James McClatchy Pub. Co.*, 16 Cal. App. (2d) 188, at 196, 60 Pac. (2d) 510:

> "It is now settled in California that the question of whether an individual is an employee or servant of another or whether he is an independent contractor is to be determined, in the final analysis, by the *right of control* which the assumed employer is entitled to exercise over the actions of the assumed employee."

In the case of *Batt v. San Diego Sun Pub. Co.*, 21 Cal. App. (2d) 429, at 436, 69 Pac. (2d) 216, 219 (1937), the Court quoted with approval from the case of *Bohanon v. James McClatchy Pub. Co.* (*supra*), in discussing the control test to determine the existence of the employer-employee relationship, as follows:

> "However, in this connection it must be borne in mind, as heretofore observed, that the control which is recognized as the test of the relationship means *unqualified control, complete control*, and that in the very nature of things, a person who is beneficially interested in work which another is performing for him *is permitted to* exercise some measure of control with-

Here the facts disclosed that the newsboy was allotted his selling spot, he was required to be diligent in selling his papers, and such spot was protected as against sales by other boys by the district manger, who also supervised the activites of the newsboy. He sold for two different publishers. The Court held, page 49:

> ". . . we are constrained to hold that the limited amount of control which the publishers of these two newspapers undertook to exercise over the newsboys . . . who daily purchased from their district manager a specified number of copies of their daily issues for a specific sum, payable in cash or at the close of each day's sales, and who undertook the retailing of the same to such customers among the public at large as they were able to attract or procure at a specified place and price fixed by the publishers, would not as a matter of law be sufficient to constitute such newsboys the employees of the publishers of said newspapers. . . ."

Considerable capital has been made by the Board out of the statement of Mr. Isaiah Jacob Moore (News district man).

"I have a minimum guarantee" [R. 1129].

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out incurring the responsibilities or acquiring the immunities of a master, with respect to the person controlled."

Western Indemnity Co. v. Pillsbury, 172 Cal. 807, 159 Pac. 721, 723, 724 (1916);

Barton v. Studebaker Corp., 46 Cal. App. 707, 189 Pac. 1025, 1029 (1920);

Rathbun v. Payne, 21 Cal. App. (2d) 49, 68 Pac. (2d) 291, 292 (1937);

Winther v. Industrial Accident Commission, 16 Cal. App. (2d) 131, 60 Pac. (2d) 343, 345 (1936).

California Labor Code, Sec. 3000, St. 1937, p. 261:

"A servant is one who is employed to render personal service to his employer, other than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the employer, who is called his master."

Although the Board made extensive findings based on this statement,[19] which respondent submits are not sustained thereby, it is submitted that a "minimum guarantee" is not evidence indicative of the employer-employee relationship. The Court, in the case of *Bohanon v. James McClatchy Pub. Co. (supra)*, in connection with its discussion as to what consideration should be given to the *method or manner* of payment, in determining the relationship of employer-employee, held:

> "If, however, the compensation amounts to a *specified recompense for a designated result*, it may not be contended with hope of success that it is indicative of a relationship of employment."[20]

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[19]The Board found [R. 468]:

> "If the earnings of a district manager are less than the guaranteed minimum, the News pays him an amount sufficient to yield the district manager the minimum guarantee. In the event the district manager's income exceeds the minimum guarantee, he retains the excess . . . . the minimum sum guaranteed by the News to its district managers is no more than a fixed salary bearing another label. The so-called profit above the minimum guarantee is merely a variant of the bonus or commission system typical of nearly all mercantile business."

[20]In the case of *New York Indemnity Company v. Industrial Accident Commission (supra)*, the Court referred with approval (at p. 48) to the case of

> *Hillen v. Industrial Accident Commission*, 199 Cal. 577, 250 Pac. 570,

stating that in that case

> ". . . it was held by this Court that the essential test by which to determine whether in doubtful cases the relation between a workman and those for whom he was rendering service was that of an employee or of an independent contractor, was not so much dependent upon whether he received wages or whether he was to devote all or a portion of his time to the performance of his specified service, but was rather dependent upon the extent of control or right of control which the so-called employer was to exercise over its so-called employee."

POINT I (c-1).

Substantial Evidence as Applied to Findings in

(a) THE REPRESENTATION PROCEEDINGS:

Respondent submits that there is no substantial evidence (and in several instances no evidence whatsoever) as to this respondent, sustaining any of the following findings of the Board found in its Decision and Direction of Elections and Statement of the Case [R. 77] viz:

> 1. "He (the district man) receives for his services a fixed salary or a guaranteed minimum plus commissions. His name is carried on the company payroll, and admittedly, he is an employee of the publisher." [R. 89, 90.]

Comments:

There is *no* evidence as to this respondent that the name of the district man is carried on the payroll or that admittedly he is "an employee of the publisher" or that he has a fixed salary. The testimony of circulation manager Dutton F. O'Brien and the testimony of district man Sidney Glenn Murray, hereinbefore quoted, is precisely to the contrary. While district man Murray, as well as O'Brien, both testified that the district men established their own selling prices of newspapers to newsboys, thus negativing any probability of the establishment of a "guaranteed minimum," district man Moore testified, respecting his arrangements with respondent [R. 1129]:

> "Well, I have a *different* set-up than that. I have a minimum guaranty."

This statement of this one witness is *the only testimony in the entire record* of which we are aware, that could be used in establishing any part of the foregoing findings. It is earnestly urged that such evidence cannot be considered "substantial evidence."

2. "Each district manager . . . delivers the newspapers or directs company employed truck drivers to haul the newspapers, wrapped in bundles and addressed to specific newsboys in trucks provided by the publisher." [R. 90.]

Comments:

There is no testimony in the record sustaining this finding as to this respondent. In fact there is no evidence in the record to indicate that respondent kept any record of the names of its newsboys save only the "checkmen."

3. "The newsboys retain for themselves as earnings, the difference between the amount *they pay the publisher* for the newspaper and the sum they receive for it from the public." [R. 92.]

Comments:

There is no testimony in the record showing that the newsboy pays the publisher (this respondent) any sum whatsoever for the papers the newsboys sell. All of the testimony offered with respect thereto is to the effect that the newsboys buy the papers directly from the district men, who have already purchased the papers from respondent. See testimony hereinbefore quoted of Mr. O'Brien, Mr. Murray and Mr. Moore.

4. ". . . it is undenied that the district managers unilaterally determine the number of 'extra' papers in excess of the established order which the newsboys must attempt to sell." [R. 92.]

Comments:

There is no testimony in the record to sustain this finding with respect to this respondent. The only testimony offered respecting the establishment of an order or the determination of the number of papers which the newsboy purchased was that of Edward Victor Smith, whose testimony to the effect that he told his district man the day before how many papers he would want has been hereinbefore quoted, and the testimony of Arthur Steuart, hereinbefore quoted, also negativing the finding above quoted.

5. "The record is replete with instances in which district managers have removed, permanently or temporarily, newsboys from their corners or transferred them from one location to another, for various reasons." [R. 100.]

Comments:

In so far as this respondent is concerned, the record is not "replete" with any such instances. Just *one* witness, Edward Victor Smith, whose testimony is hereinbefore quoted, testified that his corner had been *changed*, but further stated that he changed the place where he was to receive his papers so it would be more convenient for him in connection with the *operation of his flower business.*

There is no testimony in the record of which we are aware, indicating that any district men selling respondent's

newspapers, have removed (as distinguished from transferred) any newsboys either temporarily or permanently from their corners.

6. "In certain instances, however, the companies have objected to the newsboys handling competing publications." [R. 106.]

Comments:

In so far as this respondent is concerned, there is no evidence to sustain such finding.

7. "Through the district managers, who are authorized to act as publishers' representatives in the circulation and distribution of their newspapers, the companies hire the newsboys by the allotment of corners and spots, thus providing them with a place to work, . . ." [R. 108, 109.]

Comments:

There is no evidence in the record to show that the district men are authorized to act as this respondent's representatives in the circulation or distribution of newspapers —or for any other purpose. There is no evidence in the record sustaining the finding that this respondent hires newsboys. *Per contra*, district man Sidney Glenn Murray testified that he hired his own newsboys.[21] We believe this

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[21]Testimony of Sidney Glenn Murray [R. 1116]:

"Q. Would you outline in general what you say to these people (prospective newsboys) when you put them on the corners? A. Well, nothing. Only that they come to me for a job and I ask them if they want to cover that spot and if they like it, why to keep it and if they don't I will have to look up somebody else, either me or the Examiner or Times fellow.

Q. Do any of those boys in your district handle other papers? A. They all handle all three of them, *my boys*."

is the only evidence in the record on this question, nor is there any evidence that this respondent allotted corners or spots to newsboys.

8. "Moreover, the companies control the number of papers delivered to the newsboys for the purpose of sale . . ." [R. 109.]

Comments:

This finding is not sustained by any evidence in the record.

9. "Furthermore, the companies at will discharge the newsboys, transfer them to other locations, and lay them off as disciplinary measures." [R. 109.]

Comments:

There is no evidence in the record as to this respondent of any discharge of newsboys or of the exercise of any disciplinary measures by the company, nor is there any evidence of any "lay-offs" by the company. As previously stated, there is evidence of one transfer from one corner to another, of one newsboy by a district man.

(b) THE COMPLAINT CASE:

It is respectfully submitted that the following findings are not supported by any substantial evidence.

1. "We find as did the Trial Examiner, that . . .

"(b) All full time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys, constitute units (a unit) ap-

propriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment. We further find that the aforesaid employees at all times material herein, constituted and now constitute units appropriate for the purposes of collective bargaining. . . ." [R. 464.]

2. "We find, as did the Trial Examiner, that on and at all times after July 30, 1941, with respect to the News . . . the Union was the duly designated bargaining representative of a majority of the employees in each of the aforesaid appropriate units . . . . ." [R. 465.]

3. "News district managers, in at least some instances, unilaterally determine the number of papers allocated to newsboys for sale." [R. 470.]

4. "We find, as did the Trial Examiner, that the respondent News, on August 27, 1941, and at all times thereafter . . . has (each) refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act." [R. 472, 473.]

The comments made with respect to the findings in the Representation Proceedings apply also to the findings, quoted above, in the Complaint Case.

POINT I(d).

The Term "Employee" as Used in the Act Should Be Given Its Legal and Conventional Meaning.

As the Board would have no jurisdiction over the controversy unless the newsboys are employees of petitioner—National Labor Relations Act, Sections 1, 2 (3), (5), (9), 7, 9 (a), (b) and (c)—it is first necessary to determine their status and therefor to determine the meaning of the word "employee" as used in the Act.

No enlightening definition is given in the Act. Section 2 (3) provides as follows:

> "The term 'employee' shall include any employee . . ."

Then follows certain inclusions and exclusions which are immaterial to the case at Bar.

In the light of such definition, respondent contends and at all times in these proceedings has contended that the word "employee" should be considered in its conventional, well-recognized meaning and sense as developed under the common law and Statutory Enactments.[22]

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[22]The Court below sustained petitioner's contention in this respect:

> "Since the term 'employee' is not defined in the Act, we agree with petitioners' contention that it must be given its conventional meaning as developed under the common law and statutory enactments. Such a result is in accord with the basic theory of statutory interpretation that the legislature is presumed to use words in their ordinary sense *unless that sense is contradicted by the context of a statute.*" [R. 1848.] (Citing various cases.)

It is submitted that the use of the word "employee" in its conventional sense is not contradicted by the context of the Act in defining the word "employee."

Counsel for the Board, however, have contended that the determination of the meaning and the scope of the term "employee" as used in the Act should be deemed to be the prerogative of the administrative body, and that such terms should be interpreted to include all persons who "function in a realistic economic sense as employees of an industrial enterprise" (Board's brief in United States Circuit Court of Appeals, p. 46).

The Board's counsel have further contended that the lower courts should be advised in connection with the interpretation of the National Labor Relations Act and certain other Acts, as to whether "employee" is to be interpreted in an "enlightened manner" giving effect to "realities of economic relationship" or is to be given a "narrow construction such as the court below applied to the case at bar" (Board's Petition for Writ of Certiorari, p. 25). It requires no particular imagination to appreciate that the application of such theorems or propositions would result in clothing the administrative body with authority enabling it at will to enlarge its own jurisdiction and powers under the Act beyond that clearly intended by Congress.

This court, in discussing construction of statutes, in the case of *Lynch v. Alworth-Stephens Co.*, 267 U. S. 364-370, stated:

> "and the plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover."

U. S. v. First National Bank, 234 U. S. 245 at 258:

> "That this natural and usual signification of plain terms is to be adopted as the legislative meaning in the

absence of clear showing that something else was meant, is an *elementary* rule of construction frequently recognized and followed in this Court."

Von Weise v. Commissioner of Internal Revenue, 8 C. C. A., 69 F. (2d) 439, 441. Cert. Den. 292, U. S. 655.

"One of the cardinal rules for construing statutes is that the words used are to be given their common ordinary meaning in the absence of indication in the statute or in the surrounding circumstances to the contrary; but, if a definition of the word is given in the statute, that definition is controlling."

We do not believe it can be successfully maintained that the Act contains a definition as such. At most, it contains a statement declaring (in effect) that the term should be considered in its conventional, well recognized meaning and sense.

In determining the meaning of the word "employee" under the Federal Employers' Liability Act (U. S. C. A. Title 45, sec. 51), in the case of *Robinson v. Baltimore & Ohio Railroad Company*, 237 U. S. 84, at 94, 59 L. Ed. 849, at 853 (1914), this court stated:

"We are of the opinion that Congress used the words 'employee' and 'employed' in the Statute in their natural sense and intended to describe the conventional relation of employer and employee."

It is contended that Congress having failed to specifically define the term "employee" as used in the National Labor Relations Act, that it is only reasonable to presume that it intended that such term be used in its ordinary and conventional sense, and that it may likewise be reasonably presumed that Congress intended that the Act should only effect and embrace that class of persons

who came within the term "employee" as used in its conventional sense, at the time the Act was passed.

Thus, in the case of *Kepuer v. U. S.*, 195 U. S. 100, at 124, it was held:

> "It is a well settled rule of construction that language used in a statute which has a settled and well-known meaning, sanctioned by judicial decision, is presumed to be used in that sense by the Legislative Body."[23]

Again in the case of *Jones v. Goodson*, 121 Fed. (2d) 176, 180 (C. C. A. 10th, 1941), the Court in determining whether or not the relationship of employer and employee existed under the Federal Social Security Act, made the following pronouncement:

> "It must be presumed that Congress was cognizant of these well established principles at the time of the enactment of the Statute, and if different guides were intended for ascertaining whether the relationship of employer and employee existed between parties in the application of the Statute, appropriate language would have been used to indicate such purpose."

It is significant that Congress, in defining the word "employee" in the Federal Social Security Act[24] (August

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[23] "The word 'bequest' having the judicially settled meaning which we have stated, we *must* presume it was used in that sense by Congress."

U. S. v. Merriam, 263 U. S. 179, 187 (1923).

See, also:

McDonald v. U. S., 89 Fed. (2d) 128, 133 (C. C. A. 8, 1937; Cert. Den. 301 U. S. 697);

Old Colony R. Co. v. Commissioner, 284 U. S. 552-560, 52 S. Ct. 211.

[24] "The term 'employment' means any service of whatever nature performed within the United States by an employee for his employer, except . . . ." (Sundry exceptions) Federal Social Security Act.

10, 1939, C. 666, Title IX, sec. 905(a), 53 Stat. 1400; 42 U. S. C. A. sec. 1011(b)) followed the same general pattern as it adopted in defining the word "employee" in the National Labor Relations Act.

Again in interpreting the Federal Social Security Act (*supra*), the Court, in the case of *Williams v. U. S.* (7 C. C. A.), 126 F. (2d) 129, 132 (Cert. Den., 317 U. S. 655), stated:

> "It has been held by this and other courts that employment within the meaning of the Statute connotes the legal relationship of employer and employee as those terms were defined and understood at the time of the enactment—furthermore, that an independent contractor is not an employee."[25]

In discussing the term "employee", the Court stated, in the case of *Stevenson v. Lake Terminal R. Co.* (6 C. C. A.) 42 F. (2d) 357, 358, 359:

> "The congressional failure to define the term 'employee' . . . has evoked a large amount of litigation . . . and the Supreme Court has held that the term 'employee' in the Employer's Liability Act describes the conventional relation of master and servant."[26]

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[25]To like effect:

Radio City Music Hall Corp. v. U. S., 135 Fed. (2d) 715 (C. C. A. 2, 1943).

[26]See, also:

Bailey, Adm'x v. Central Vermont Railway, Inc., 319 U. S. 350, 352;

Hull v. Philadelphia & Reading Ry. Co., 252 U. S. 475, 479 (1920);

Anglim v. Empire Star Mines Co., 9 Cir., 129 F. (2d) 914, 917.

POINT I(e).

The Determination of the Meaning of the Word "Employee" as Used in the Act Is a Legal Question, and Hence a Function of the Court and Not of an Administrative Body.

Respondent contends that a word or term having a judicially settled meaning must be presumed to have been used in that sense by Congress in the framing of Acts or Laws, and that it is the prerogative of the Court, and not that of an administrative body, to determine the judicially established meaning.

As was stated by this Court in the case of

> *U. S. v. American Trucking Associations*, 310 U. S. 534, 544:
>
> "The interpretation of the meaning of statutes as applied to judiciable controversies is exclusively a judicial function."

There has been no departure by the Court from the well established rule that findings of the Board must be sustained by substantial evidence.[27] The Court below found that there was no *substantial evidence* to sustain the findings of the Board,[28] but the Board would propose, by applying a different meaning to the word "employee" to enlarge its concept and thereby extend its own jurisdiction by including in the meaning of such word persons who function in a "realistic economic sense" and in determin-

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[27] See Point 1—Sub. C in this Brief.

[28] "We think the Board is not supported by substantial evidence in its finding that the 'newsboys' are employees of the publisher whose newspaper they vend." [R. 1851.]

ing such meaning to give "effect to the realities of economic relationship." (Petition for Writ of Certiorari, p. 25.) To that end it would propose to change and enlarge the judicially established meaning of the word "employee." It is respectfully submitted that such proposals should not be approved or accepted.

Respondent's contention is not repelled by sundry cases relied upon and cited by the Board in its Petition for Certiorari.

Gray v. Powell, 314 U. S. 402.

This case involved the determination by the director of the Bituminous Coal Division of the question of whether or not a railroad company was a "producer" of coal. Under the provisions of the Bituminous Coal Act of 1937 (15 U. S. C. A., secs. 828, *et seq.*) (particularly Section 4(a)) the matter of the determination of such question was *specifically delegated by Congress to the Commission.* No such delegation with respect to the determination of the meaning of the word "employee" was made by Congress in the National Labor Relations Act —rather was the word "employee" given (in effect) by the provisions of Section 2(3) of the Act, its ordinary and conventional meaning.

The Court stated in *Gray v. Powell, supra, after discussing the delegation of certain powers to the administrative body*, as follows (p. 411):

> "Such a determination as is here involved belongs to the usual administrative routine. Congress, which could have legislated specifically as to the individual exemptions from the Code, found it more efficient to *delegate that function* to those whose experience in

> a particular field gave promise of a better informed, more equitable, adjustment of the conflicting interests of price stabilization upon the one hand and producer consumption upon the other . . . where as here *a determination has been left to an administrative body* this delegation will be respected and the administrative conclusion left untouched."

Even where such matters are specifically delegated by Congress to an administrative body as in the case of *Gray v. Powell, supra*, this Court was still careful to preserve the right of review of the acts of the administrative body, stating at page 411:

> "In a matter left *specifically* by Congress to the determination of an administrative body, as the question of exemption was here by Secs. 4-II(1) and 4-A, the function of review placed upon the Courts by Sec. 6(b) is fully performed when they determine that there has been a fair hearing, with notice and an opportunity to present the circumstances and arguments to the decisive body, and *an application of the statute in a just and reasoned manner.*"

and continuing at page 413:

> "Unless we can say that a set of circumstances deemed by the Commission to bring them within the concept 'producer' is so unrelated to the tasks entrusted by Congress to the Commission as in effect to deny a *sensible exercise of judgment*, it is the Court's duty to leave the Commission's judgment undisturbed."

South Chicago Coal & Dock Co. v. Bassett, 309 U. S. 251.

This case turned on the question of whether or not a certain employee of the petitioner, who met death while engaged in performing certain work for petitioner, was a member of a "crew" within the meaning of Longshore men's and Harbor Workers Compensation Act, 44 Stat. 1424; 33 U. S. C. A. and U. S. C. A. Supp. Sec. 901 *et seq.*, in which Act the term "employee" was restrictively defined as follows:

> "The term 'employee' does not include a master or member of a crew of any vessel nor any person engaged . . . . to load or unload . . . any small vessel. . . ."

After pointing out (p. 257) that the determination of the question of whether or not the deceased was "a member of a crew" had been *confided by Congress to the Deputy Commissioner,* the Court stated, page 258:

> "Hence the Court of Appeals correctly ruled that his (Deputy Commissioner's) finding, *if there was evidence*[29] *to support it,* was conclusive and that *it was the duty of the District Court to ascertain whether it was so supported* and, if so, to give it effect without attempting a retrial."

It will again be observed that this Court, even where authority to determine certain specific facts has been delegated by Congress, reserves the absolute right to determine whether the conclusions reached by the administrative body were justified and whether or not the evidence

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[29]Evidence means substantial evidence.
National Labor Relations Board v. Columbia Enameling & Stamping Co., (*supra*).

adduced was sufficient to support such conclusions. It is significant that in its opinion the Supreme Court duly considered and discussed, in the case of *South Chicago Coal & Dock Co. v. Bassett* (*supra*), the evidence adduced before the Commission, which statement can be applied with like effect to the case of *Gray v. Powell, supra*. Indicating rather conclusively that the right of the Courts to determine the sufficiency of evidence adduced before an administrative body or the *reasonableness of the application of such evidence in support of findings* is not to be impaired—any other conclusion would result in the sapping of judicial power as it exists under the Constitution of the United States.

A further important distinction should be noted between the case at bar and the case of *South Chicago Coal & Dock Co. v. Bassett* (*supra*). In that case petitioners urged that the question of whether or not the decedent was a member of a crew was a question of law. This Court held that (p. 258):

> "The word 'crew' does not have an absolute unvarying *legal* significance."

and at some length explained its various meanings. This, it is respectfully submitted, is not true with respect to the word "employee" which has a well established conventional and legal meaning under the common law and statutory enactments.

An examination of the cases of

Shields v. Utah Idaho Central R. Co., 305 U. S. 177;

Rochester Telephone Corporation v. U. S., 307 U. S. 125;

and

Sunshine Anthracite Coal Co. v., Adkins, 310 U. S. 381,

does not disclose any departure by the Court from the rule or principles herein contended for.

For example: the case of *Shields v. Utah Idaho Central R. Co., supra,* involved the status of respondent as to whether or not it was an inter-urban electric railway, the Act providing that if it was, it was excepted from the provisions thereof. There appeared to be no controversy respecting the meaning of the term "inter-urban electric railway," hence the question to be determined was purely a question of fact. The Court stated at pages 180, 181:

> "As Congress was free to establish the categories which should be excepted, Congress could bring to its aid an administrative agency to determine the question of fact whether a particular railroad fell within the exception, and Congress could make that factual determination after hearing and upon evidence, conclusive."

Again, in the case of *Sunshine Anthracite Coal Co. v. Adkins, supra,* we find the question turned on whether or not coal being mined by the appellant was "bituminous coal," the answer to which in turn determined whether or not *Adkins* came within the purview of the Bituminous Coal Act. The term "bituminous coal" was definitely de-

fined by the Act and as in the *Shields* case (*supra*), the meaning of the term did not appear to be in question. The Court held that Congress could delegate to the Commission the determination of such question of fact, and (p. 400):

> "That guide (the act and definitions) is *sufficiently precise* for an intelligent determination of the ultimate questions of fact by experts."

It can scarcely be contended that the definition of the word "employee" in the National Labor Relations Act is "sufficiently precise" or precise at all, save as it clearly established the intent of Congress to use the word in its customary, conventional and legal sense.[30]

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[30]Thus, by an examination of the cases of *Gray v. Powell* (*supra*), *Sunshine Anthracite Coal Co. v. Adkins* (*supra*), *Shields v. Utah Idaho Central R. Co.* (*supra*), we find full support for the statement by the Court below as follows:

> "Contrary to the cases cited (those just referred to), there is no delegation to an administrative body of power to determine whether the facts are within a specified exception to a statute, the exercise of which power involves an interpretation of terms. Rather does the instant case fall within the general rule that 'the interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function.' United States v. American Trucking Ass'ns, Inc., 310 U. S. 534, 544." [R. 1848.]

POINT II.

There Is No Substantial Evidence Supporting the Finding or Conclusion of the Board That the Claimed Bargaining Unit for the Alleged Employees of Respondent Was an Appropriate Unit.

The Rule Fixing and Basis for Determining Eligibility for Membership in the Union Is Discriminatory, Arbitrary and Capricious.

1. AN APPROPRIATE UNIT IS ESSENTIAL.

Section 9(a)-(b) of the Act provides:

> "(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purpose shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining . . ."
>
> "(b) The Board shall decide in each case whether . . . the Unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof."

Respondent is charged with unfair labor practices within the meaning of the Act, such charge being that respondent refused to bargain collectively with the representatives of employees. Respondent having at all times denied that the newsboys selling its newspapers were its employees, it was conceded by respondent that it was unwilling to bargain collectively with the representatives of the Union.[31]

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[31]Respondent and representatives of the Union entered into a stipulation [R. 397] a portion of which reads as follows:

[R. 399]. ". . . the representatives of the respondent in the presence of the representatives of the Union stated in effect, that the respondent, although willing to continue its long established policy of meeting and dealing with representatives of the newsboys distributing and selling its newspapers, was not willing to bargain collectively with the Union under the aforementioned certification."

By the provisions of the Act, Section 9(a), representatives designated for such collective bargaining must be selected by a majority of the employees in a unit appropriate for such purpose. The failure to bargain, therefore, to constitute an unfair labor practice, must be a failure to bargain with "representatives" who have been lawfully designated from an *appropriate* unit.

2. Evidence to Support the Board's Finding of "an Appropriate Unit" Must be Substantial.[32]

National Labor Relations Board v. Columbia Enameling & Stamping Company (supra);

Consolidated Edison v. National Labor Relations Board (supra).

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[32]In the Representation Proceedings, the Board found

"We find as did the Trial Examiner, that

(b) All full time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys, constitute units (a unit) appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment. We further find that the aforesaid employees at all times material herein, constituted and now constitute units appropriate for the purposes of collective bargaining . . ." [R. 464.]

"We find, as did the Trial Examiner, that on and at all times after July 30, 1941, with respect to the News . . . the Union was the duly designated bargaining representative of a majority of the employees in each of the aforesaid appropriate units." [R. 465.]

3. THE APPROPRIATE UNIT.

The Board found in its decision of March 30, 1942, that an appropriate unit (applicable to this respondent) was [R. 464]:

> "All full time[33] newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys . . ."

Thus it appears that the constituency of the "appropriate unit" was developed by an application of a rule or definition which was capricious, arbitrary and discriminatory. It should be noted that two classifications appear in the finding of the appropriate unit—(1) "full time newsboys," and (2) "checkmen," engaged in selling the News in Los Angeles, California. It should be observed that "full time newsboys" are defined by stipulation as noted in footnote, but checkmen are not so, or at all, defined.[34]

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[33]In its Decision and Direction of Elections (Fourth Amendment) [R. 142], the Board found (supported by stipulation) with respect to a full-time newsboy, as follows:

> "With respect to the News, the term 'full-time' newsboy means a newsboy who sells to the general public Five, Six, Eight, Nine and Ten Star editions, or Six, Eight, Nine and Ten Star editions of the News, 5 or more days a week, and means a newsboy who sells the Four Star edition and previous editions of the News for a minimum of four hours per day between the hours of 4 o'clock a.m. and 10 o'clock a.m., five or more days a week."

[34]There are several references in the record, however, showing that the duties of the checkmen were to "count out" newspapers to other boys and for that service they received a fixed compensation. [R. 891.]

There is a dearth of testimony respecting even the approximate number of "full time" newsboys and checkmen engaged in the sale of the News. Mr. Patrick Comorre, Union Organizer, testified [R. 1148] that he estimated that there were 110 to 114 full time newsboys selling the *morning* editions. There appears to be no testimony as to how many full time newsboys there were selling the afternoon editions, *i.e.*, the Five, Six, Eight, Nine and Ten Star editions. The witness testified that he estimated [R. 864] that there were 210 to 212 full time newsboys and checkmen selling the Herald and Express. In view of the fact that some newsboys sold both the Herald and Express and the News, respondent procured a stipulation to the effect that such testimony should not be applicable to the News.[35]

Thus it appears that we do not even have an estimate of the number of full time newsboys selling any editions of the News except the Fourth and earlier editions.

The witness Comorre testified that he estimated that there were between 650 or 700 newsboys selling the Herald-Express and the News [R. 863]. Trial Examiner Kennedy evidenced particular interest with respect to the dif-

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[35][R. 865.] "Mr. Cosgrove: May we have a stipulation to the effect that the testimony given by the witness Comorre, since he was recalled to the stand yesterday afternoon late, and including his testimony this morning, is not intended to apply to the Los Angeles Times?

Mr. Mouritsen: It may be so stipulated. Also with reference to the Examiner.

Mr. L. B. Binford: And the News?

Mr. Mouritsen: Yes."

ference between the total number of newsboys selling the News and the so-called full time newsboys.[36]

Mr. William J. Harrison, Circulation Manager for the Herald and Express estimated, however [R. 1033] that there were between 2200 and 2500 newsboys engaged in the sale of the Herald and Express, and Mr. Robert L. Smith, General Manager of respondent testified respecting newsboys handling the Herald and Express and the News, that beginning with the Five Star edition, in the main the newsboys who handled the Herald and Express also sold the News [R. 1066], hence the "difference" between the 210 (full time newsboys) and the six or seven hundred (newsboys) referred to by Trial Examiner Kennedy could probably have more accurately been referred to as the difference between 210 and 2200.

Inasmuch as there is nothing in the record from which the approximate number of "full time newsboys" and

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[36][R. 864.] "Trial Examiner Kennedy: . . . Now, as to this large balance here, the difference between 210 and the six or seven hundred, has the Union ever taken any of those in? A. Well, when they have wanted to come in or asked us to take them in we have taken them into the Union, *but we prefer not to have them.*

Trial Examiner Kennedy: Do you have any idea of about how many of that class you have in the Union now? A. No. They go and come so much that you can't hardly figure them. At the present time I don't know.

Trial Examiner Kennedy: Well, what is the reason you don't want them in the Union? The Witness: Well, because they—well, my reason would be that they don't work steady; they are going and coming and they don't depend on it for a livelihood."

Thus it would appear that the rule or basis for eligibility was not necessarily adhered to.

checkmen engaged in selling the News within Los Angeles, California, can be ascertained, it is impossible to determine whether or not the membership in the Union of "full time newsboys" and checkmen represents any substantial percentage of such newsboys and checkmen. It appears, as a matter of fact, that Mr. Comorre, Union Organizer, determined who were full time newsboys and checkmen on the basis of what he "considered" them to be.[37]

Common interest, methods of sale, working conditions, character of work—none of these elements were considered with respect to eligibility. It appears from the definition of full time newsboys, *supra*, that no newsboy who sells only the four star edition of the News, even though he worked four hours per day, five or more days a week, would be a full time newsboy. Notwithstanding the fact that the newspaper is printed six days a week and sold by newsboys six days a week, eligibility is based on five days service. Why it was established at five or six or four does not appear. Under the arbitrary definition boys selling the eighth, ninth and tenth editions of the

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[37] [R. 863-864]:

"Q. (By Mr. Mouritsen): Mr. Comorre, you estimated that there were some 600 newsboys, 600 or 700, in the city and of that there were about 220 checkmen and 210 or 212 checkmen and full time hustlers. Of what does the difference between 212 and 700 newsboys consist? What type of newsboys are they? A. Well, the 210 or 212, *that is what I considered* was the full time newsboys and checkmen, and the rest of them were boys that come out after school, as I think I explained before in the previous question."

News five or more days a week do not qualify as a full time newsboy, although obviously their hours would be as long or longer than the boys selling the early morning editions.

Thus it appears that even though a newsboy sells the same editions of the News as another boy, purchases papers from the same district man, works under the same conditions, he may still be disqualified as a full time newsboy for various reasons. No such restrictions are placed upon checkmen.

It is respectfully submitted that there is no substantial evidence supporting the existence of an appropriate unit. The finding of an appropriate unit must be supported by substantial evidence.

National Labor Relations Board v. Carlisle Lumber Co., 94 Fed. (2d) 138, 142 (C. C. A. Ninth, 1937);

National Labor Relations Board v. Lund, 103 Fed. (2d) 815, 819 (C. C. A. Eighth, 1939);

Pittsburgh Plate Glass Co. v. National Labor Relations Board, 313 U. S. 146, 152.

Conclusion.

It is earnestly contended and respectfully submitted:

That the Findings of the Board declaring that newsboys selling respondent's newspapers are its employees, are not supported by substantial evidence;

That the Findings of the Board with respect to the establishment of an "appropriate unit" are not supported by substantial evidence;

That the decision of the Court below should be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1943

No. 338

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

HEARST PUBLICATIONS, INCORPORATED,

Respondent.

BRIEF OF RESPONDENT HEARST PUBLICATIONS, INCORPORATED, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

October Term, 1943

No. 338

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

HEARST PUBLICATIONS, INCORPORATED,

Respondent.

BRIEF OF RESPONDENT HEARST PUBLICATIONS, INCORPORATED, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Respondent Hearst Publications, Incorporated, Los Angeles Evening Herald and Express Department, publisher of the Los Angeles Evening Herald and Express (hereinafter referred to as "Herald") presents the following brief in opposition to the National Labor Relations Board's petition for a writ of certiorari in case No. 338 (being No. 10115 in the Court below).

Opinion Below.

The opinion of the Circuit Court of Appeals is reported in 136 Fed. (2d) 608.

Jurisdiction.

The decree of the Circuit Court of Appeals was entered on June 10, 1943. The Board's petition for writ of certiorari was filed September 9, 1943. Notice of the filing of such petition with copy thereof and of the record was served on counsel for this respondent on September 18, 1943. Jurisdiction of this Court is invoked under Sec. 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, and Sec. 10(e) and (f) of the National Labor Relations Act.

"Statement."

We respectfully submit that the "Statement" (Petition, pp. 3 to 12) prepared by the petitioner is in many respects wholly inaccurate and is not supported by the record. Despite the fact that this respondent is affected only by testimony of vendors selling its publication and that many stipulations were entered into by counsel for this respondent and counsel for the Board to the effect that the testimony of vendors selling other publications had no application to this respondent [R. 1294, 1310, 1312, 1328, 1372, 1422, 1432, 1453, 1475], the petitioner has attempted to state a summary of all of the evidence taken in four separate proceedings and apparently deemed, by petitioner, to be applicable to all respondents. This summary, based on all of the testimony taken, is, quite naturally, inaccurate in many respects in application to this respondent. Moreover, where the summary contains citations to the record of testimony deemed specifically applicable to this respondent, examination discloses that in some instances the cited testimony does not support the text and in other instances the cited testimony is directly contrary to it. The sum-

mary is also inaccurate in that it omits much testimony deemed important by the Ninth Circuit Court of Appeals and commented upon in the opinion of that Court.

Accordingly, the "Statement" has been carefully compared with the record and variances between the two and the omissions noted.*

The "Statement" recites (P. 4) "." . . . the newsboys . . . are not boys, as the name implies, but are mature or elderly men . . . ." The record shows that many vendors are 21 to 22 years of age and many are high school boys [R. 859-860].

The "Statement" recites (P. 5) "Many of them (news vendors) have long *service* records." What the record actually shows is that many vendors have owned or occupied their same corners for many years. Thus the witness Apice [R. 1117], whose testimony is referred to in the "Statement", occupied his corner about seven years and stated that he obtained the corner from," . . . a friend of mine." The witness Relish borrowed money and bought his corner for $100.00 [R. 736]. At the time of the hearing, he had occupied it for about six years [R. 727]. The witnesses Bryant and Faber; in effect, exchanged corners. Bryant purchased one corner from Faber for $600.00 and sold another corner to Faber for $250.00 [R. 924, 925, 926], on or about June 1, 1939 [R. 922] The witness Schullman purchased his corner from his predecessor on a deal which permitted the former owner to go to college while Schullman paid him a stated sum per week. The cost of the corner to Schullman was about $1200.00, and

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*References to the Petition are noted thus: (P. ....) and to the record thus: [R. ....].

at the time of the hearing (June 10 to June 27, 1940) he had occupied the corner for about fifteen years [R. 930-931]. The witness Gallagher bought his corner some twenty years prior to the date of the hearing, from the previous owner, for $300.00 and still owned and occupied the corner as of the date of the hearing [R. 939]. The witness Newman purchased his corner for about $250.00, and at the time of the hearing had owned and occupied it for about fourteen years [R. 945]. The witness Powers bought the corner, on which Pat Comorre, the organizer of the Union, was vending newspapers and magazines at the time of the hearing, from the daughter of the deceased former owner, for $150.00 [R. 999-1003] The Bill of Sale for the corner, set forth in full in the record [Herald Ex. No. 5, R. 481, introduced in evidence at R. 1002], was dated January 21, 1939.

The "Statement" recites that newsboys are "hired" and "fired", "disciplined, directed and supervised by respondents through supervisory employees known as the 'District Manager' or the 'Districtman'". (P. 6). The record reference "Herald, R. 605-607", deals, however, only with the testimony of the Circulation Manager concerning the duties of "wholesalers", sometimes called "check men", whose duties as wholesalers have no connection with their independent business of vending newspapers [R. 606] and who are, solely in the performance of such wholesaling duties, admitted to be employees. This respondent has at all times been willing to negotiate with the representatives of "wholesalers" concerning hours, wages and conditions of employment of "wholesalers" as such, and the status of such wholesalers is not here in dispute.

The "Statement" recites (P. 6): "The District Managers keep lists of newsboys in their districts . . . ." The

record reference shows that what was kept were "route sheets", showing the *places* where papers were left, and the *approximate number* of papers delivered to such places [R. 572], and that is all the route sheets show. Such "route sheets" were kept by the individual District Managers to aid them in delivering the number of papers ordered to the particular corner [R. 573]. No records whatsoever, even copies of route sheets, were kept or maintained at the plant of the company [R. 575-1032]. When the Trial Examiner requested a list of the names and locations of vendors, the same was procured by sending a man into the field to ascertain the required information [R. 630-635]. The only names shown in the records of this respondent were the names of "wholesalers", discussed hereinabove, which names appeared on the company payrolls.

The "Statement" recites (P. 6): "The District Managers determine the number of newspapers to be taken out each day for distribution by the check men and newsboys in their respective districts in the light of the importance of the day's headline, sometimes doubling or trebling the usual number." The aforegoing statement is an example of the complete confusion resulting from an attempt, by one quite apparently not familiar with the record in this case, to epitomize in one sentence the duties of Districtmen and wholesalers in relation to the delivery of newspapers to the independent newsboys or vendors.

As pointed out hereinabove, "wholesalers" are hired by this respondent, or its independent dealers, to distribute or parcel out newspapers to vendors in certain small, specified areas [R. 604-606]. Newsboys do not distribute newspapers. The record reference, cited by the Board

[R. 1048] but apparently completely misunderstood by the writer of the "Statement", describes the method by which district managers determine how many *extra* papers they will take on their delivery runs. Thus the number of *extras* is determined by the district manager from the importance of the headlines, etc., but has nothing whatever to do with the newsboy's "standing order" or "base order", which is determined, lowered or raised by, and at the will of, the individual vendor [R. 1048-1049]. The district manager delivers to the vendor his "base" or "standing" order [R. 1048], and also has available on the same truck the above described "extras", a portion of which the vendor may or may not buy, as he chooses [R. 1051].

The "Statement" recited (P. 7):

> "They keep the newsboys informed as to how news is developing . . ."

The record shows that exactly the contrary was true [R. 566-567].

> ". . . what breaks to anticipate . . ."

The record references cited concern only the advising of news vendors of infrequent advanced press times for the proposed issuance of prize fight or election extras or of opportunities to sell at the "Coliseum" during special events.

The above quoted language implies a continuous course of advice and supervision over a period of years. The record in this case shows an extremely different situation.

The record shows that following presidential elections (every four years) and state elections (every two years), an early morning extra was put out. This necessitated an earlier press start and an earlier delivery to corners.

News vendors were advised of such fact by district managers and by notice in the newspapers. The same practice once prevailed with respect to "prize fight" extras, but no such extras had been issued for some three or four years prior to the date of the hearing [R. 579]. The Record also shows that infrequently news vendors were advised of opportunities to sell at special events held at the Los Angeles Coliseum. These events also occurred very infrequently. Thus the witness Kadish, who at the time of the hearing had been selling newspapers for ten or eleven years [R. 804] testified that he sold newspapers at the Coliseum twice during that period, once during a Shrine Convention, and once during an American Legion Convention [R. 806].

". . . How to call important headlines and how to play up special features . . ."

There is not one word of testimony in the record referred to, supporting the aforegoing statement. An examination of the record discloses that no instructions whatever are given news vendors [R. 600-601, 596, 692, 697].

The "Statement" recites (P. 7): "In addition, both the Examiner and the Herald maintain further supervision over the checkmen and newsboys through 'checkers' who patrol the districts, noting whether the checkmen and newsboys keep hours, 'hustle' with due diligence, follow instructions as to the manner of displaying and calling papers, and otherwise conduct themselves according to rules." The record references cited show the exact contrary to be true. The Circulation Manager of respondent testified: "We have checkers who check the district men and do not check the newsboys, but the district men" [R. 575] . . . These checkers are not supposed to discuss

anything or talk with or give any orders whatever to newsboys" [R. 576]. That the duties of the two checkers employed were only to observe "The circulation, yes, the revision of the territory, and whether or not the district manager appears to be neglecting a part of his territory or all of it or none of it . . . for instance he will report that the papers are laid on a certain corner, due at a certain time and they arrive later than that time. He may also report the time that the Daily News of a similar edition arrived at that place. On a later edition, the last edition of the day, he will report the time that our papers reached some parts of the territory and the time that the Times and Examiner reaches those places, with their first edition of the evening . . . . I know of no other points . . ." on which they check [R. 577].

The "Statement" recites (P. 7): "The checkers make written reports to the Herald and the Examiner, and when necessary recommend newsboys for discharge, discipline, or reprimand in a written instruction to the district manager."

The testimony cited shows that the checkers make reports on the "points" above described, after which the Circulation Manager testified, ". . . I merely make a memorandum of it and throw the report away . . . or send it to the branch who in turn will take it up doubtless with the district manager in whose territory the complaint, if any occurred."

The evidence thus discloses that this respondent employs two checkers to check its own employees, viz: the district managers, in the performance of their duties, and that they have no contact with nor duties in respect of the news vendors and make no reports concerning news vendors' activities.

The "Statement" recites (P. 8): "The newsboy obtains employment by applying at the plant to the district manager, who then assigns him to a particular spot, if an opening is available.".

The testimony discloses [R. 590, 595, 606, 638, 696] that newsboys wishing to sell papers apply to district managers, in all parts of the city, for openings, meaning unoccupied corners, and if there is such a corner in the district the newsboy is furnished papers. The only district managers who work out of the main plant are the managers of the downtown area [R. 590]. All others work out of branch offices [R. 638, 682, 696]. As hereinabove pointed out, "openings", that is, unoccupied corners, are seldom available in the downtown district, and if they are left vacant it is usually because they are unprofitable [R. 599]. Profitable corners, on the contrary, pass from buyer to buyer for large sums of money, without the consent or knowledge of respondent [R. 1039, 1040]. The witnesses Relish [R. 736], Bryant and Faber [R. 924-926], Schullman, one time president of the Union [R. 930], Gallagher [R. 939], Newman [R. 945], and Powers and Comorre, the Union organizer [R. 999], all purchased their corners from previous owners. No one of these newsboys even thought it necessary to consult with representatives of the respondent in such matters. The witness Comorre testified that the witness Powers bought his corner from the daughter of the deceased former owner; that he (Comorre) Powers and Comorre's eldest son all worked the corner and that no one of them ever asked respondent's representatives to consent to such arrangement [R. 1004-1005].

The "Statement" recites (P. 8): "All respondents also furnish transportation to the newsboys from the plant to

their respective corners and after work is over bring them back." In support of this statement is a reference to the testimony of one district manager of respondent that on one or two occasions, vendors living near the plant of respondent in downtown Los Angeles hopped a ride on the truck delivering the first morning edition to their corners to save car fare, but on no occasion did they ride back [R. 995-997]. This seems obvious in view of the fact that the last trip of the truck to their respective corners brings the last edition of the paper which they are selling. This isolated instance can hardly be termed "furnishing transportation."

The "Statement" recites (P. 8): "The newsboys are subject to removal at will and to transfer or disciplinary layoffs by the district managers."

Petitioner cites seven instances in the record in support of the aforegoing assertion. The record discloses that papers were refused to one vendor who was drunk. When he sobered up, papers were again given him [R. 601]. Papers were refused another vendor when he refused to pay for papers already received [R. 901] and to another for selling at less than the established retail price [R. 876]. Another vendor was charged, by an irate father with making obscene remarks to a small girl, and another engaged in a fist fight with the owner of the drug store on the corner at which the vendor sold. In the first mentioned instance, neighborhood feeling was running high, inflamed by a recent murder of two little girls. For the protection of the vendor, papers were temporarily refused him, and when neighborhood feeling subsided sales were again made to him [R. 1146]. In the other instance a better corner was found for the vendor [R. 769]. In another instance, papers were refused to a vendor because

of repeated complaints of the owner of a food market of the vendor's uncleanliness and body odor [A. 741-743, 968-972]. At the time of the hearing, this vendor was relief man for the Herald vendor at Sixth and Spring Streets in Los Angeles [R. 967-969]. The last instance cited by the petitioner was that involving the witness Relish. On or about December 21, 1934, a letter was received from the Downtown Business Men's Association, complaining about the activities of this vendor [Herald Ex. No. 2—R. 483—introduced in evidence at R. 918]. Relish testified that he was told by the Herald Superintendent of Street Sales "that I would have to get rid of my corner and in the meanwhile to put somebody to stay on my corner until I could get somebody to sell it and get rid of it . . . ." [R. 917, 918]. Relish, however, engaged an attorney, who wrote respondent as follows:

> "Harry Relish, who sells magazines and newspapers at the northeast corner of Fifth and Spring Streets, this city, tells me that you discontinued selling him your papers at the written request of the Downtown Business Men's Assn., the later named being instigated by the Rowan Building . . . ."

The attorney further charged a conspiracy to deprive his client of his livelihood [Herald Ex. No. 4—R. 480—introduced in evidence at R. 1039]. The activities of Relish and his attorney resulted in the sending of another letter to respondent by the Association, informing respondent that in view of the investment Relish had in the corner, he should be entitled to "recover his investment" [Herald Ex. No. 3—R. 485—introduced in evidence at R. 920]. Accordingly, respondent continued to sell newspapers to Relish.

The aforegoing instances, occurring over a period of five or six years, in a group averaging several hundred vendors, show only isolated instances of reasonable refusals to sell newspapers to independent vendors and do not substantiate the petitioner's conclusion of arbitrary discharges of employees "at will."

In a footnote (P. 8) petitioner charges the exercise by respondent of supervision in "relaying from the circulation manager instructions relative to price changes, the time of the appearance of an extra on the streets, or the manner in which the newspaper is to be displayed."

This sentence implies a constant and unremitting supervision by respondent's employees of the vendors. Thus petitioner uses the plural "price changes." The record shows, however, that there was only one price change made during the period under examination. In 1937, the retail price of the Herald was raised from three to five cents. The vendors were advised both direct and by notice published in the paper [R. 558-559; 1012].

The infrequency of the issuance of extras has already been discussed hereinabove.

As to the display of papers, the record shows that as a result of conferences held in 1937, between representatives of the Herald and the News, it was decided that neither organization would object to the sale by a news vendor of both competing newspapers if the vendor was willing to sell both [R. 555 *et seq.*]. Within a week or so after the news vendors began to sell both newspapers, friction arose between the various district men representing the respective papers over the matter and the circulation managers of the two papers decided that future friction could be avoided by having the News carried folded outside of the Herald [R. 563]. Through the branch managers and

the district managers, notice of the understanding between the two organizations was given to the news vendors and they were asked to cooperate. Several news vendors testified to conversations regarding the method of displaying the two competing papers, which conversations took place at or about the time the vendors undertook to sell both, in 1937, but there was no testimony of any conversations indicating discussions or suggestions concerning the manner of display of papers in the years intervening between 1937 and June, 1940, the date of the hearing in the matter. Thus, notifying the news vendors of one price change and of, possibly, four or five early press runs, and one request to such vendors to give competing publications an even break on display, during a period of five or six years, is pictured as supervision.

In admitting that practically all of the vendors selling this respondent's newspaper also sold magazines (P. 10), the petitioner attempts, by grouping the four respondents in this mater together, to gloss over the undenaible fact that all four newsapers are competitors, and that all of the news vendors selling this respondent's newspapers are selling at least one or more of such competing newspapers. In addition to selling these competing publications, the vendors generally sold Liberty, Collier's, Saturday Evening Post, Look, The People's World, Los Angeles Daily Journal, Wall Street Journal, Time, "Ham and Eggs", Rose Bowl folders and New Year editions, as well as the B'Nai B'Brith Messenger and the Jewish Voice (R. 714, 718, 727, 744, 746, 793, 818, 830, 841, 849, 866, 875, 879, 886, 922, 932, 940, 945, 977, 981-1027).

The "Statement" recites (P. 11): "The Newsboys are required to sell the papers at the prices fixed by respondents." The fact is that all newspapers and magazines,

like many other articles, are sold at fixed advertised prices. The public will seldom pay more than the established price, but in the case of shortage of newspapers sometimes do so [R. 569-570] However, no limitation whatever is laid on the vendors in the matter of selling for more than the advertised price [R. 570] and there was testimony of only one instance of the sale by a vendor for less than the advertised price [R. 876].

The "Statement" recites (P. 11): "They do not pay for the papers when they get them, but at the end of each day return unsold papers and are charged a certain amount specified by respondents for papers not returned."

In its application to this respondent, the aforegoing sentence is inaccurate. Only news vendors in the down-town district are allowed to return all unsold copies of this respondent's newspaper. In other districts they pay for all they take, whether they sell them or not [R. 648, 658, 687, 709, 752, 851, 883, 944, 952]. Some news vendors check in and pay for their papers at the close of the day [R. 686], others in the middle of the day for all papers previously purchased as well as those purchased but not at the time of checking in, resold [R. 723], and others check in the next day [R. 943]. News vendors who are allowed returns take all risk of loss for credit extended and pay for all papers destroyed or stolen. News vendors who do not get returns, of course, do likewise [R. 688, 689].

The "Statement" recites (P. 11): "The checkmen and newsboys regard themselves as employees. . . . were so regarded by representatives of respondents . . . and by the public."

It is also admitted in the record [R. 605] that in so far as wholesalers, also called checkmen, perform wholesaling

duties for Respondent, they are employees, and that such limited employment has no connection with the wholesalers' independent occupation of vending newspapers and magazines [R. 582]. News vendors do not generally regard themselves as employees [R. 943, 946, 928]. The portions of the record cited in support of the alleged public reaction are those portions having to do with the altercations between Gish and the food market proprietor, Apice and the father of the young girl, and Stewart and the drug store proprietor, discussed hereinabove. The testimony cited does not support the conclusion drawn by Petitioner.

Although a Union was formed, which sought to negotiate, it was admitted by the organizer that the representatives of this Respondent ". . . made it very clear that they would not negotiate a contract—or consider negotiating a contract until it was decided whether newsboys were employees . . ." [R. 672].

The petitioner wholly fails to call the attention of this Court to the undisputed fact that many news vendors were themselves employers. The witness Schullman testified that he employed five newsboys, paying them a commission on their sales [R. 931] and that he hired and fired his five newsboys at will [R. 937]. The witness Gallagher testified that he employed five assistants on a commission basis [R. 939]; that he employed at least five newsboys all during the twenty year period in which he operated the corner and that at no time had a district manager of respondent ever said anything to him concerning his employees. The witness Newman testified that he employed three boys after school, to whom he paid a salary and commission [R. 946]. The witness Klein testified that he employed two newsboys to work for him after school and that he paid his relief man on an hourly basis [R. 982]. The

witness Spillers also employed one assistant [R. 883]. The record also discloses that news vendors employed and dismissed their own relief men [R. 720, 737, 743, 931, 939, 946, 982, 1004]. The organizer of the Union, Pat Comorre, sold papers as a relief man for his brother-in-law, Harry Powers [R. 1009]. Occasionally Pat Comorre's son sold papers on the corner [R. 1005, 1010]. The witness Relish testified that he picked his own relief man [R. 738]. The witness Faber testified that he picked his own relief man and paid him a regular wage [R. 720]. The witness Gish worked as relief man for Schwartz [R. 743].

It should be noted also that the Board made its finding of employment of all news vendors on the testimony of isolated instances of alleged control by twelve news vendors. No attempt was made by counsel for the Board to take the testimony of the rest of the 200 to 250 vendors claimed to be within the unit. During the hearing, this matter was raised by the Trial Examiner and, after discussion of the matter, he wired the Chief Trial Examiner in Washington for instructions. He received the following answer:

> "Evidence should be introduced to show that persons signing cards are employees. Burden is on the petitioner to show this fact. I assume respondent denies card signers occupy the position of employees. If so, evidence should be introduced to show that each individual does." [R. 1493.]

This telegram was received after the case involving this respondent was, in practical effect, closed. No additional testimony of vendors of this respondent's publication was introduced, despite the warning of the Trial Examiner that evidence had not been introduced ". . . to show what each individual does" [R. 1513].

ARGUMENT.

1. The Decision of the Court Below in the Instant Case Does Not Conflict With Decisions of This Court or Other Circuit Courts of Appeal.

We respectfully submit there is no conflict between the decision of the Court below with the cases cited by petitioner.

The decision of the Court below states as follows (136 Fed. (2d) 608, 613, 614):

> "The question for decision as to each newspaper separate from any other paper is whether there is substantial evidence that the publisher exercises, or has the right to exercise, sufficient control over the activities of the newsboys defined in its appropriate unit to support the Board's decision that they were employees under Sec. 2(3) of the National Labor Relations Act.
>
> "Each publisher in its brief points out in detail the only testimony relating to it that could support the Board's findings. We shall not attempt to distinguish between the evidence separately referable to each publisher in view of the fact that we believe, even though all the testimony be applied to all petitioners, or that induced upon behalf of each be applied to it alone, that *there is not substantial evidence herein to support the Board's determination that the newsboys are 'employees' of the publishers.* *Cf.* Matter of Houston Chronicle Publishing Co., 28 NLRB 1043."
>
> "We think the Board is *not supported by substantial evidence in its finding that the 'newsboys' are employees of the publisher whose newspaper they vend.*"*

*Emphasis ours.

In *Walker v. Altmeyer* (C. C. A. 2d), decided July 12, 1943 (not yet, at this time, reported), the Court said:

> "It is perfectly clear that the referee had ample evidence in the testimony of the plaintiff to support his finding that the plaintiff performed the same kind of services under the same supervising control of Williamson after the method of computing his pay was changed . . . The facts underlying that decision which were found on substantial evidence were, of course, binding upon the district court."

The quotations from the opinion of the Ninth Circuit Court in this case show clearly that the Court examined the record in the instant case and concluded that the Board's finding of employment was not supported by substantial evidence. In the *Walker* case, the Second Circuit Court examined the record and concluded that the finding of the referee was supported by "ample evidence." The rule of law applied by the Ninth Circuit Court and that applied by the Second Circuit Court is the same, and there is no conflict between the cases.

In *Gray v. Powell*, 314 U. S. 402, respondents, as receivers of the Seaboard Air Line Railway Company, sought exemption of certain coal from the Bituminous Coal Code on the ground that they were both the producer and consumer of the coal. If Seaboard was a producer, it was entitled to exemption. Seaboard leased three mines and contemporaneously with such leases, the landowner lessors, leased to contractors selected by Seaboard, the mining equipment on the leased premises. At the same time Seaboard entered into an operating contract with the equipment lessee, for the extraction of coal and the delivery thereof to Seaboard for consumption. The purpose of The Bituminous Coal Act of 1937 was to stabilize con-

ditions in the industry. The Court discussed the background of the Act and pointed out that captive coal had been defined by Congress in the Bituminous Coal Conservation Act of 1935; that Congress had apparently not considered coal consumed by the producer to have the same disturbing effect on prices as non-code open market coal, and had provided a method of exempting the same, but that Congress failed to define exempt coal as it had defined captive coal in the 1935 Act. Thus Congress delegated the determination of exempt coal to the administrative body.

This Court said:

> "In a matter left specifically by Congress to the determination of an administrative body, as the question of exemption was here by Sections 4-II(1) and 4-A, the function of review placed upon the courts by Section 6(b) is fully performed when they determine that there has been a fair hearing, with notice and an opportunity to present the circumstances and arguments to the decisive body, and an application of the statute in a just and reasoned manner. Shields v. Utah Idaho C. R. Co., 305 U. S. 177, 180, 181, 184, 185, 187, 83 L. ed. 111, 114-118, 59 S. Ct. 160.
>
> "Such a determination as is here involved belongs to the usual administrative routine. Congress, which could have legislated specifically as to the individual exemptions from the code, found it more efficient to delegate that function to those whose experience in a particular field gave promise of a better informed, more equitable adjustment of the conflicting interests of price stabilization upon the one hand and producer consumption upon the other. By thus committing the execution of its policies to the specialized personnel of the Bitumious Coal Division, the Congress followed a familiar practice."

In *Shields v. Utah Idaho Central R. Co.*, 305 U. S. 177, the Court considered the effect of a determination by the Interstate Commerce Commission, for the purposes of the Railway Labor Act, that the respondent was not an interurban railway. The Act created certain exceptions from its operation and delegated to the administrative agency the fact finding power of determining whether a particular railroad came within the exception. In this instance, also, Congress failed to define interurban. The Court reviewed the evidence taken before the Commission and held that its finding had a basis in substantial evidence, was not arbitrary or capricious, and that in reaching its determination the Commission had not departed from applicable principles of law.

In *South Chicago Coal & Dock Co. v. Bassett*, 309 U. S. 251, the Court had again for consideration the effect of a determination by an administrative agency of the factual question that a certain individual did not come within classes excluded from the operation of the Longshoremen's and Harbor Worker's Compensation Act. Again the Court carefully reviewed the evidence taken before the Commission and reviewed the cases considering the meaning of the word "crew". The Court then said:

> "Regarding the word 'crew' in this statute as referring to the latter class, we think there was evidence to support the finding of the deputy commissioner."

In *Rochester Telephone Corp. v. United States*, 307 U. S. 125, the Court again considered a determination of an administrative body that a telephone company was under the control of another and hence not within the exception

declared in the Communications Act of 1934. The Court said:

> "The record amply justified the Communications Commission in making such findings. Investing the Commission with the duty of ascertaining 'control' of one company by another, Congress did not imply artificial tests of control. This is an issue of fact to be determined by the special circumstances of each case."

Each of the above cases concerned Acts of Congress containing exceptions or exclusions from the operation of the respective Acts, the determination of which was specifically delegated to the particular board. In each case the Court reviewed the evidence adduced before the respective administrative bodies and determined that the respective findings of fact were supported by substantial or ample evidence.

In the instant case no claim is made that the vendors in question come within the classes of employees excluded from the operation of the Act by Sec. 2(e) thereof, viz: agricultural laborers, domestic servants and individuals employed by a parent or spouse. On the contrary, this respondent has consistently maintained that the Board has no jurisdiction in this matter, because news vendors are not employees at all; that the determination of this question is not a pure finding of fact, the power to determine which is delegated by Congress to the Board, but rather that the question of the meaning and scope of the word "employee", going, as it does, to the very jurisdiction of the Board, is a question for the Courts, the erroneous determination of which by the Board is not binding upon the Courts, within the doctrine of *United States v. American Trucking Ass'n's., Inc.*, 310 U. S. 534, 544, and *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 654.

The powers of the Courts in this respect are described by the Circuit Court of Appeals for the District of Columbia in *Brotherhood of Railway and Steamship Clerks, etc. v. United Transport Service Employees of America,* ..... Fed. (2d) ....., decided August 2, 1943, and not yet reported, as follows:

> "We are convinced that the Mediation Board, (National Mediation Board) when its good offices were invoked in this case, was called upon to do more than reach a decision on a mere issue of fact, which, if supported by evidence, would be conclusive upon the Courts . . .
>
> ". . . . We are constrained to hold, therefore, that the Board misinterpreted the law applicable to the facts in this case and that its order dismissing appellee's application to be certified as the bargaining agent for the employees concerned, was contrary to law. Full recognition is accorded to the necessarily large discretion vested in the administrative agency in determining the occupational boundaries that comprehend a craft or class . . . As we have pointed out, however, the record raises questions of *law* and *fact* that deserve better than cavalier disposition by both the administrative and the Courts, and the parties are entiled to have them determined in accordance with due processes of law." (Emphasis ours.)

The Third Circuit Court of Appeals announces the same view in *Warner Co. v. Norton,* 137 Fed. (2d) 57, at page 58, as follows:

> "While the question as to whether a particular claimant is 'a master or member of a crew' of a vessel and therefore excluded from the Compensation Act is one of fact, it is necessarily an ultimate con-

clusion to be derived from an application of the statute to the basic findings of fact. As such, it is open to court review for a determination of its validity on the basis of the supportable facts as found by the Commissioner. In short, a Commissioner's conclusion that one is or is not 'a master or member of a crew' is not binding upon a reviewing court if the basic facts competently found by the Commissioner rightly call for a different conclusion."

The Fifth Circuit Court of Appeals takes the same view. In *Jacksonville Paper Co. v. National Labor Relations Board*, 137 Fed. (2d) 148, at 150, the Court said:

"It is not for this Court to say that the Examiner and the Board were in error in believing the testimony of one witness over another. That is the peculiar province of the Board. But the Court is not without power to interpret or construe the testimony of the witnesses whom the Board and the Examiner have chosen to believe. It is within the province of the Court to determine whether or not words spoken and actions taken amount, as a matter of law, to unfair labor practices under Section 8 of the Act. It is the province of the Board to determine whether words were spoken or acts were done. However, the legal effect of the words spoken or acts done, and a determination of whether or not they amounted to a violation of the Act, may be a legal question and within the power of the Court to determine. It is also within the power of the Court to determine whether or not there is a total lack of evidence on which any particular finding could be predicated. It is also within the power of the Court to determine whether or not there is any ambiguity or inconsistency in the findings of the Board."

In *Hillcone S. S. Co. v. Steffen*, 136 Fed. (2d) 965, the Ninth Circuit Court of Appeals, without discussion of the powers of the Court over an administrative finding, rejected the finding of a deputy commissioner and held that the appellee came under the provisions of the Longshoremen's and Harbor Workers' Compensation Act in that the appellee's services were maritime in character, although performed on a vessel out of commission for an indefinite period of time.

2. The Court Below Correctly Determined That the Word "Employee" as Used in the National Labor Relations Act Must Be Given Its Conventional Meaning.

The Court below said: "Since the term 'employee' is not defined by the Act, we agree with petitioner's contention that it must be given its conventional meaning as developed under the common law and statutory enactments." [R. 1848.]

In the Court below, the Board contended for a different meaning, as follows: "Where the persons involved function in a realistic economic sense as employees of an industrial enterprise, Congress intended them to be within the Act." [R. 1847.]

In *Robinson v. Baltimore & O. R. Co.*, 237 U. S. 84, 94, the question was whether or not a contract exempting a railroad company from liability for injuries to a pullman car porter was prohibited by the Employers Liability Act of 1908. The Court held that such prohibition extended only to contracts with employees, and that, inasmuch as the porter was not an employee of the company,

the contract was valid. In determining the meaning of the word employee, the Court said:

> "We are of the opinion that Congress used the words 'employee' and 'employed' in the statute in their natural sense, and intended to describe the conventional relation of employer and employee."

A similar view was taken in connection with express company employees. (*Wells Fargo Co. v. Taylor*, 237 U. S. 84.)

This same view has been expressed in numerous cases specifically dealing with the Social Security Act, so-called social legislation.

Anglin v. Empire Star Mines Co., 129 Fed. (2d) 914;

Texas Co. v. Higgins, 118 Fed. (2d) 636;

United States v. Griswold, 124 Fed. (2d) 599;

Indian Refining Co. v. Dallam, 119 Fed. (2d) 417;

Radio City Music Corp. v. United States, 135 Fed. (2d) 715.

In *Ridge Country Club v. The United States*, 135 Fed. (2d) 718, the Seventh Circuit Court of Appeals, applied the usual and conventional tests of employment in the construction of that term as used in Federal Unemployment and Insurance Contribution Tax Acts. The relationship there in question was quite similar to that involved in some instances in the case involving this respondent. The Court, in holding that in certain of his activities the golf professional was not an employee, said:

> "The pro sustained a *dual* relationship to the club. Concededly, he was an employee as to the annual

retainer, yet an independent contractor when he acted as a shopkeeper and instructor.

"We have not overlooked the fact that these two capacities were bound together by a single contract and that one was dependent on the other. But, looking at the single issue as to the nature of the pro's relationship to the club when giving instructions or operating the shop, we think it clear that he was an independent contractor.

"Both sides point out attributes of the 'employer-employee' and 'independent contractor' relationships, *i. e.*, control by the employer of the employee's activities, right of discharge, etc.

"All those criteria are standard tests used in the several unrelated fields of jurisprudence, *i. e.*, workmen's compensation, principal and agent, contracts, etc."

And the Courts have followed the same rule in connection with the Fair Labor Standards Act, also referred to as social legislation. In *Bowman v. Pace*, 119 Fed. (2d) 859, the Fifth Circuit Court of Appeals denied that the Fair Labor Standards Act created new liabilities, saying:

"The strongly contested issue is whether he was the employee of the Pace Company at all. If not, he cannot recover of that Company. It is not the purpose of the Fair Labor Standards Act to create new wage liabilities, but where a wage liability exists, to measure it by the standards fixed by law."

In another case involving the Fair Labor Standards Act, the Sixth Circuit Court of Appeals applied the usual and conventional tests of employment. In *Walling*

v. Sanders, 136 Fed. (2d) 78, the Court clearly indicates that an administrative agency must keep within the limits of its delegated power. The Court said:

> "This appeal involving the coverage of the Fair Labor Standards Act, 29 U. S. C. A. Sec. 201 *et seq.*, illustrates to an extent even greater than do others recently considered, the difficulty that confronts a court in delineating the area which Congress has taken over for national supervision of employer-employee relationships in fields hitherto considered within the domain reserved to the states, and illustrates also the persistence of administrative authority to seek the widest possible exercise of granted power. Since abandonment of old distinctions between what is national and what is local, the Congress has not, in commendable ventures in social legislation, granted to administrative bodies coextensive spheres of authority. Enforcement must therefore be kept within the limits both of constitutional and delegated power."

As to the test of employment, the Court said:

> "The usual test by which, in common experience, men determine the employer, is to ascertain who has authority on his own account to 'hire and fire.' But the administrator urges that the term 'employee' as here used is not a word of art but one carefully defined by the statute. He refers to Sec. 3(e) of the Act which defines 'employee' as any individual employed by an employer, and Sec. 3(g) which defines 'employ' to mean 'to suffer or permit to work.' Since the appellee suffers or permits drivers to work for its salesmen, *ipso facto* they work for it. This likewise does not follow. In so broadly defining the word 'employ' Congress undoubtedly had a purpose.

> to relieve complainants of the necessity of proving a contract of employment. The administrator desires us to construe employees so as to include not only those who work for an accused employer, but also those who work for anybody else. Manifestly this would encompass all employed humanity."

None of the aforementioned acts differ in character from the National Labor Relations Act. Their purpose is beneficient and they are liberally construed. Yet in every instance that we have encountered, the various Courts have used the well established and settled criteria, the conventional tests, for the determination of the existence of the employer-employee relationship, and have steadfastly maintained that the beneficent purpose of the Acts could not and did not create new relationships or new liabilities. For these milestones the petitioner would substitute a vague, nebulous and uncertain similitude, called an "employment concept." We believe that such a contention must here be rejected, as a similar contention was by Simons, C. J., of the Sixth Circuit Court of Appeals, in *Hirst and Company v. Geutsch*, 133 Fed. (2d) 247, 249, who said:

> "In a time of evolutionary development in constitutional and statutory interpretation, we are urged to base decision upon a foreshadowing of adjudications to come rather than upon clearly applicable precedents. Whatever course others may take, we are content to adhere to the observation made by us in Ammond v. Pennsylvania R. R. Co., 6 Cir., 125 F. (2d) 747, 751; to which we may add that, until the contrary is demonstrated, we find the rule of *stare decisis* a safer guide to decision than a reading of the stars."

3. The Court Below Correctly Ruled That There Was No Substantial Evidence Supporting the Finding of the Board That Newsboys Are Employees. In So Holding the Court Correctly Applied the Established and Accepted Precedents.

The status of news vendor or newsboy has been frequently considered by the various Courts, and the tests for determining the nature and character of the relationship were well established long prior to the enactment of the National Labor Relations Act. Moreover, these tests were developed not only in connection with "liability at common law," but in the interpretation of statutes of the exact character of the above mentioned Act. As a matter of fact, one of the earliest cases on the subject, *New York Indemnity Company v. Industrial Accident Commission*, 213 Cal. 43, 1 Pac. (2d) 12, involved the interpretation of the word employee as used in the Workmen's Compensation Act of the State of California. The claimant Eustace sold, among others, the newspaper published by this respondent. Although this Act required by its terms that it "shall be liberally construed by the Courts with the purpose of extending" its benefits for the protection of persons injured in the course of their employment (Stats. of Calif. 1917, Ch. 586, Sec. 60—now Labor Code, Sec. 3202), and further provided:

> "The findings and conclusions of the Commission on questions of fact are conclusive and final and are not subject to review." (Stats. of Calif. Chap. 586, Sec. 67—now Labor Code, Sec. 5953)

the Court held the claimant not to be an employee within the meaning of the Act and annulled the award of the Commission.

The rule in the above case was applied by the Court in *State Compensation Fund v. I. A. C.*, 216 Cal. 351, 14 Pac. (2d) 306, to a claim for compensation made by a routeman, and in *Hartford Accident & Indemnity Co. v. I. A. C.*, 123 Cal. App. 151; 10 Pac. (2d) 1035, to a claim made for compensation by a corner news vendor.

The same position has been taken by the Courts of California in cases not involving claims for compensation under the Workmen's Compensation Act.

Bohanon v. McClatchy Pub. Co., 16 Cal. App. (2d) 188, 60 Pac. (2d) 510;

Rathbun v. Payne, 21 Cal. App. (2d) 49, 68 Pac. (2d) 291;

Butt v. San Diego Pub Co., 21 Cal. App. (2d) 429, 69 Pac. (2d) 216.

Like rulings on similar factual statements have been made by the state courts of other states.

Call v. Detroit Journal Co., 191 Mich. 405, 158 N. 36;

Oklahoma Pub. Co. v. Greenlee, 150 Okla. 69, 300 Pac. 684;

Joslin v. Idaho Times Pub. Co. (Idaho), 53 Pac. (2d) 323;

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Birmingham Post v. Sturgeon (Ala.), 149 So. 74;

Creswell v. Charlotte News Pub. Co. (N. C.), 168 S. E. 408;

Florida Pub. Co. v. Lourcey (Fla.), 193 So. 847;

Balinski v. Press Pub. Co. (Pa.), 179 Atl. 897;

People v. Masiello, 31 N. Y. S. (2d) 512.

Petitioner states (p. 24, and Footnote 16) that there is diversity of judicial opinion as to how common law and related tests should be applied to news vendors. Petitioner cites several cases and asks that they be compared with the cases cited by the Court below. It is respectfully submitted that the cases cited in Note 16 are not in point.

The facts in the case of *Salt Lake Tribune Publishing Company v. Ind. Acc. Commission*, 99 Utah 259, 102 Pac. (2d) 307, show that there the claimant involved was a *carrier*, not a newsboy. His duties required that he deliver newspapers to the company's subscribers, make collections, and obtain new subscribers. The carrier was required to attend meetings and to keep a list of subscribers, which was the property of the company.

In *Pacific Employers Insurance Co. v. Ind. Acc. Commission*, 3 Cal. (2d) 759, 47 Pac. (2d) 270, the newsboy there involved was paid a "bonus" to insure his exclusive services in the sale of the company's newspaper, and was required to be on the corner during designated hours.

In re Scatola, 282 N. Y. 689, 26 N. E. (2d) 815, concerned a route carrier who delivered newspapers to persons who had subscribed to the publication through the company. The carrier was specifically prohibited from selling on the street newspapers given to him for the purpose of delivery.

In the cases of *Wilson v. Times Printing Co.*, 158 Wash. 95, 290 Pac. 691, *Hampton v. Macon News Printing Co.*, 64 Ga. App. 150, 12 S. E. (2d) 425, and *Gallaher v. Ricketts*, 187 So. 351, no newsboys were involved, but in each instance the claimant was a *route*

carrier, simply performing a delivery and collection service for the publisher.

We have herein (Statement, pp. 2 to 16) epitomized the evidence before the Board. That evidence clearly shows that the news vendors here involved are not employees. It demonstrates that at no time did the petitioner assert or attempt to assert the complete control which is the badge of employment. Nothing in the record shows that respondent was in the position of a "master who has the supreme choice, control and direction of the servant, and whose will the servant represents, not merely in the ultimate results of the work, but in all details." (*Childers v. Commissioner,* 80 Fed. (2d) 27, 30.) The control in all details includes control by the employer of the means and method of performance. (*Fidelity & Casualty Co. v. Ind. Acc. Commission,* 191 Cal. 404, 216 Pac. 578.)

Such control as to means and method must be complete. (*Western Indemnity Co. v. Pillsbury,* 172 Cal. 807, 811.)

The same tests are applied in the Federal Courts. In *Radio City Music Hall Comp. v. United States,* 135 Fed. (2d) 715, 717, the Court considered whether performers in vaudeville acts were employees, for which the theater was required to pay tax. The Court said:

> "The test lies in the degree to which the principal may intervene to control the details of the agent's performance; and that in the end is all that can be said, though the regulation redundantly elaborated it. In the case at bar the plaintiff did inter-

vene to some degree; but so does a general building contractor intervene in the work of his subcontractors. He decides how the different parts of the work must be timed, and how they shall be fitted together; if he finds it desirable to cut out this or that from the specifications, he does so. Some such supervision is inherent in any joint undertaking, and does not make the contributing contractors employees."

Applying the aforesaid tests to the activities of the respondent in this case, we find such activities fall far short of the complete control of an employer over an employee, but instead the evidence demonstrates conclusively that the news vendors here involved were not employees, but were completely free in their choice of "means and methods" of sale.

4. The Application of the Aforegoing Rules to News Vendors in Respect to Their Vending Activities Is Not Changed by the Fact That Certain of Such News Vendors Received "Checks" for Services Performed to Respondent, Separate and Apart From Their Vending Activities.

Certain news vendors are employed by respondent for the limited purpose of distributing to other vendors respondent's newspaper. In such capacity, they are known as "checkmen" or "wholesalers." A complete description of their activities and functions is set forth in the testimony of William J. Harrison, then circulation manager of respondent. [R. 604, 605, 606.]

The nature of the wholesaling activities was also described by several of such wholesalers. [R. 715-722, 750,

785, 840, 933, 934.] The testimony of the wholesalers does not vary in any respect from the testimony of respondent's circulation manager. The salient points of such testimony are as follows:

> "That no newsboy receives checks from the petitioner, except and unless he performs functions as a wholesaler [R. 582]; that services as a wholesaler are rendered apart from and have no connection with the wholesaler's own independent business of selling newspapers on his own account and risk. [R. 606.] This is conceded to be so by the wholesalers themselves. [R. 781.] That wholesalers frequently conduct their selling activities for several hours before they commence their wholesaling activities [R. 702, 840], and that they continue their selling activities for some time after they have completed their wholesaling activities, including checking in to the district managers. [R. 703.] Admittedly the wholesalers are paid a fixed salary by respondent and are carried on its payroll. These facts and others tend to indicate that the wholesalers, to the extent of their wholesaling activities, are employees of the respondent."

The Court below correctly concluded that, though it be conceded that the so-called checkmen are employees of the publisher to the extent that they function as wholesalers, they need not occupy the same status to the extent they function as newsboys. [R. 1851.] To the same effect, see *State Compensation Insurance Fund v. Industrial Accident Commission*, 2 Cal. (2d) 94, 39 Pac. (2d) 201; *Ridge Country Club v. The United States*, 135 Fed. (2d) 718.

Conclusion.

The decision of the Circuit Court of Appeals is correct, and presents no conflict of decisions or unsettled question of Federal law or departure from the accepted and usual course of judicial proceedings. The Board's petition for a writ of certiorari should be denied.

Respectfully submitted,

HENRY S. MAC KAY, JR.,
Attorney for Respondent Hearst Publications, Incorporated in Case No. 338.

EDWARD L. COMPTON,
Of Counsel.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 338.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

HEARST PUBLICATIONS, INCORPORATED,

Respondent.

BRIEF OF RESPONDENT IN NO. 338.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 338.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

HEARST PUBLICATIONS, INCORPORATED,

Respondent.

BRIEF OF RESPONDENT IN NO. 338.

Respondent, HEARST PUBLICATIONS, INCORPORATED, publisher of the Los Angeles Evening Herald and Express,[1] presents the following brief in support of the affirmance of the opinion of the Circuit Court of Appeals.

OPINION BELOW.

The opinion of the Circuit Court of Appeals for the Ninth Circuit is reported in 136 Fed. (2d) 608. [R. 1843. *et seq.*][2]

---

[1]The publication is hereinafter referred to as the Herald-Express.

[2]References herein to pages of the record are designated: R. and to this petitioner's brief: Br.

JURISDICTION.

The petition of the National Labor Relations Board for Writ of Certiorari, filed September 9, 1943, was granted on October 25, 1943. Jurisdiction of the Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A., Sec. 347 (a).) and Sections 10(e) and (f) of the National Labor Relations Act (49 Stat. 449, 229 U. S. C. A., Secs. 151, *et seq.*), herein referred to as "The Act."

PROCEEDINGS BEFORE THE NATIONAL LABOR RELATIONS BOARD.

The Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., herein called the "Union", filed a petition for investigation and certification of representatives, on or about April 18, 1939, alleging that it was the proper bargaining representative of a unit consisting of "Newsboys who sell papers at main spots, full time corners and checkmen within the city limits of Los Angeles, California;" that such newsboys were employees of respondent and that the question of representation "is a question affecting commerce within the meaning of the Act." [R. 3, 4, 5.][3]

---

[3] An amended petition was filed by the Union on or about Feb. 5, 1940, describing the alleged unit as

> "Newsboys who sell papers at main spots and checkmen within the City Limits of Los Angeles, California."

A second amended petition was filed by the Union on or about June 6, 1940, describing the alleged unit as

> "All mainspot newsboys, full time newsboys and checkmen who are engaged to sell the Los Angeles Evening Herald and Express within the City Limits of Los Angeles, California, excluding bootjacks, temporary, casual and part-time newsboys."

and further avering the alleged question concerning representation to be:

> "The company refuses to bargain with representatives of Union because it contends newsboys are not employees within the meaning of the Act."

By several orders, issued by the Board, the proceeding involving Respondent was first consolidated with cases involving two Los Angeles newspapers, and thereafter a third Los Angeles newspaper was brought into the consolidated proceedings.

This Respondent filed a motion to dismiss upon the ground among others, that the Board had no jurisdiction over Respondent; that it was not engaged in commerce within the meaning of the Act; and that no one of the newsboy members of said Union and no one of the newsboys within any description of the alleged unit was or is, in so far as his newsvending activities are concerned, an employee of Respondent. [R. 35.]

Respondent also filed an answer, denying (among other matters) that Respondent was the employer of any of the newsvendors, that the so-called unit was an appropriate unit, and that any question had arisen affecting commerce within the meaning of the Act. [R. 490.] Respondent's motion to dismiss was denied. A hearing was held before a trial examiner of the Board from June 10, 1940, to June 27, 1940, and thereafter the Board issued its decision and direction of elections, dated January 9, 1941 [R. 76, 121], concluding as a matter of law that a question affecting commerce had arisen concerning the representation of employees of Respondent [R. 119] and directing an election [R. 120] among the newsboys described therein to ascertain bargaining representatives. By a "Fourth Amendment to Decision and Direction of Elections," the Board amended that portion of its "Decision" purporting to define "full time" and "part time" newsboys. [R. 138.] On or about May 14, 1941, Respondent filed a challenge to the vote of each person attempting to vote, on all the grounds, among others, set

forth in its motion to dismiss. [R. 154.] On the same day an election was held within the group defined by the Board. The aforesaid blanket challenge was overruled in the Board's "Election Report." [R. 160.] Respondent thereafter filed objections to the conduct of the ballot and to the election report [R. 168], which were overruled. [R. 179.] Thereafter the Board, under date of July 30, 1941, certified the Union as bargaining representative of the newsboys in said unit. [R. 187, 196.]

Following the aforesaid "Representation Proceedings" under Section 9(c) of the Act, "Complaint Proceedings" were initiated against this Respondent under Section 10(b) of the Act by the filing of a complaint alleging that the Union was a labor organization within the meaning of the Act; that a unit composed of all employees of Respondent who are full-time newsboys and checkmen engaged to sell the Herald within Los Angeles, excluding bootjackers, temporary, casual and part-time newsboys was an appropriate unit; that a majority of such alleged employees had designated the Union as bargaining representative; that Respondent had failed to bargain collectively with said Union; and that such failure constituted an unfair labor practice affecting commerce within the meaning of the Act. [R. 245.]

Respondent filed a motion to dismiss the complaint on the grounds, among others, that the Board had no jurisdiction over Respondent; that it was not engaged in commerce within the meaning of the Act; that none of the members of the Union or of the unit was, in so far as newsvending activities were concerned, an employee of

Respondent, and that a refusal to bargain with such Union could not burden or obstruct commerce. [R. 251.] Respondent also filed an answer to the complaint, denying, among other things, that the newsboys were Respondent's employees; that the alleged unit was a proper unit; that Respondent had engaged or was engaged in unfair labor practices, and that any question affecting commerce had arisen. [R. 245.] Respondent's motion to dismiss was denied. [R. 331, 333.] This complaint proceeding was consolidated with a like proceeding involving Times-Mirror Company, publisher of the Los Angeles Times, by order of the Board dated Oct. 23, 1941. [R. 245.] A hearing on the cases was conducted by the Board's trial examiner on Nov. 10 and 12, 1941. A stipulation was filed to the effect that there had been no material change in the conduct of the Respondent's business since the hearing in the representation proceedings in June, 1940, and that if all the witnesses who testified in such representation proceedings were called in the complaint proceedings, their testimony would be substantially the same. Such stipulation expressly saved to Respondent all of its objections then and previously urged. [R. 280.]

Following the hearing, an intermediate report, dated Dec. 4, 1941, was filed [R. 287], to which Respondent filed exceptions. [R. 316.] After oral argument, the Board rendered its Decision and Order, dated Mar. 30, 1942, directing Respondent to cease and desist from its refusal to bargain with the Union, and upon request, to bargain collectively with such Union. [R. 331, 349.]

The last mentioned Order was brought on for review to the Circuit Court of Appeals for the Ninth Circuit, which Court set the order aside.

STATEMENT OF THE CASE.

Business of This Respondent and Its Method of Wholesale Distribution of Newspapers.

The business of this Respondent, the Los Angeles Evening Herald and Express, is a separate business enterprise wholly owned by Hearst Publications, Incorporated, which enterprise has no connection with the manufacture, publication, sale or distribution of other publications published by Hearst Publications, Incorporated. The newspaper was distributed principally in the metropolitan area of Los Angeles, and only 37/100ths of 1% of its circulation was distributed outside of the State of California. It is a six-day afternoon newspaper, having no Sunday edition.[4]

The wholesale distribution of Respondent's newspapers was accomplished by its Circulation Department, under the supervision of a Circulation Manager. Under the Circulation Manager were three Branch Managers, in addition to the Superintendent of Street Sales managing the downtown area. To facilitate the distribution of newspapers, five branches (three under the supervision of one Branch Manager) were maintained in outlying districts. Direct contact with the news vendors was made by so-called District Men, approximately sixty-eight in number. These District Men operated directly under the Superintendent of Street Sales, in the downtown district, or branch managers in the outside districts. The Superintendent of Street Sales, Branch Managers and District Men were employees of Respondent. [R. 547,

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[4]"Agreed Statement of Facts," Board's Exhibit No. 2 [R. 49, 50, 51, 52, 53, 54, 55, 56]—"Decision and Order" of National Labor Relations Board, dated March 30, 1942 [R. 331, 336, 337].

548, 549.] Newspapers were delivered from the main plant of the publisher in downtown Los Angeles by its own Transportation Department direct to retail vendors, including newsstands, drug stores, grocery stores and corner vendors and to the various branch offices.

The mail room routed the newspapers, tying some in bundles addressed to various locations and others were sent in bulk. From the mail room the papers were sent to the Transportation Department for delivery to the various sales locations or to the branch offices where they were picked up by other delivery trucks and taken to the various retail outlets within the branch office district.

The District Men worked a forty-hour, six-day week—seven hours a day Monday through Friday and five hours on Saturday. Consequently they did not start to cover their respective districts until approximately two o'clock P. M. each day (except Saturday.) At and after that time they usually rode on the trucks delivering the papers, but some covered their districts in their own automobiles or by other means. [R. 545, 573, 641, 644, 645, 649, 656, 657.]

The District Man's duties were to supervise a certain territory, to collect accounts for sale of papers from the newsvendors within his territory, to accept regulation of orders that might be given him by street vendors, increases or decreases, and to recover any vacancy that might occur as, from time to time, vendors dropped out of the business. [R. 548.]

In addition to the aforegoing districts, there was one "dealer territory." In this territory, the papers were sold direct to a dealer and he in turn re-sold them to corner vendors and other retail outlets in his dealer territory. [R. 1014, 1015.]

The Respondent also employed certain newsvendors for specific duties in relation to the delivery of papers. These men, termed "wholesalers" or "Checkmen" were usually but not always vendors engaged in the "full-time" business of vending newspapers. Due to the fact that many part-time vendors were not on their corners when the newspapers were delivered, they were delivered into the care of these wholesalers and the part-time and other vendors secured their papers from the wholesaler at the intersection when they were ready to commence selling. In this way the papers delivered for sale by part-time vendors and others were protected from loss or theft. Wholesalers were employed for this purpose by the Respondent or by the "dealer". The wholesaler delivered the papers to the other vendors and collected the wholesale purchase price therefor for the account of this Respondent or the dealer by whom he was employed. He received a flat wage for the stipulated service. He did not pass upon credit risks and was not responsible for and did not assume credit losses. The wholesalers conduct their selling activities for several hours before they perform any wholesaling services [R. 702, 783, 840] and continue selling after their wholesaling is completed, including checking in to the District Managers. [R. 703.] They have no wholesale duties to perform until the "off-spot" vendors arrive, at various times of the day until as late as 4:00 P. M. [R. 783.] Most wholesalers did not have any wholesaling duties to perform until after the "Night Edition" was delivered, the press time

for which was 3:30 P. M. [R. 702.] The passing out of the papers takes only two or three minutes [R. 785] and all the rest of the time the vendor engaged in his own business of vending newspapers and magazines. [R. 785.] These duties constituted the wholesalers only employment and were rendered apart from and had no connection with the wholesaler's own independent business of selling newspapers and magazines on his own account and risk. [R. 568, 604, 605, 606, 654.] In so far as these limited duties were concerned, the wholesalers were admittedly employees of this Respondent. Respondent has at all times been willing to negotiate with the representatives of wholesalers as such, and their status as such wholesalers is not here in dispute.

Neither this Respondent nor any of its Branch Managers or Districtmen kept or maintained any lists of the names of newsvendors to whom its newspapers were sold, but it did have payroll records containing the names of its wholesalers. The District Men kept route sheets which showed only the places where papers were left and the approximate number of papers delivered at such places. [R. 572, 573, 574.] Board's Exhibit 3 [R. 616 to 629], being a list of the names and selling locations of full-time newsboys and checkmen, was compiled while the hearing was in progress and at the request of the attorney for the Board and was secured by sending a man out into the districts to procure the names of the vendors. [R. 630 to 633, 1044.]

Out of the 2200 to 2500 street newsvendors selling Respondent's publication [R. 1033], Respondent is here concerned only with the newsvendors contained within the Board's definition of an appropriate unit,[5] alleged to number approximately 209. [R. 163.]

Newsvendors' Territories.

There has grown up, over a long period of time, in the newspaper business a custom of ownership of sales territories. Obviously, there can be no actual ownership of the corners upon which newsvendors operate, but there is and has been a recognition by both the newsvendors and the publishers of certain rights of occupancy of the corners, which rights are frequently and commonly bought and sold. [R. 1039, 1040.] Naturally, corners in the

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[5]The Board's Decision and Direction of Elections of January 9, 1941, as amended by "Fourth Amendment to Decision and Direction of Elections," found the following unit to be appropriate as to this respondent:

> "All full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys." [R. 112.]

The Fourth Amendment to "Decision and Direction of Elections," amended the definition of "terms" as used in the description of the unit as follows:

> "Thus defined with respect to the Los Angeles Evening Herald and Express, the term 'full-time' newsboy means a newsboy who regularly sells to the public five or more editions a day five or more days a week; the term 'part-time' newsboy means a newsboy who sells to the public less than five editions a day or who sells to the public any or all of the daily editions published by the Los Angeles Evening Herald and Express less than five days a week." [R. 139, 142.]

downtown district or on important intersections in the outlying districts have more value than less strategic locations. [R. 589, 590.]

Inasmuch as the unit fixed by the Board specifically excludes bootjackers, temporary, casual and part-time newsvendors, no evidence was introduced in this matter concerning the customs and practices of these newsvendors in the sale of newspapers. However, a bootjacker was defined as a newsboy who sells to the general public at places other than established corners or spots, and the terms "temporary" and "casual" were defined as having their ordinary meaning. [R. 112.]

As hereinabove noted, there are 2200 to 2500 newsvendors selling Respondent's newspaper, of which only about 209 sell from established corners or spots. Thus there are hundreds of newsvendors selling papers in Los Angeles from other than "established corners or spots" [R. 1033], which places had insufficient regular patronage to make them salable as business locations and, moreover, there were corners termed "established spots," which came within the same category.

In this respect, the business of vending newspapers differs not at all from other small businesses in that some locations have considerable value and some have little or no value.

In the downtown area, the corner rights for the sale of this Respondent's newspaper have considerable value and pass from one occupant to another by purchase and

sale.[6] The less profitable locations are often abandoned by their occupants and thus become "open." [R. 589, 595.] An "open" corner is, therefore, a corner upon which newspapers were more or less regularly sold in the past, or merely a corner upon which no other vendor is then selling. [R. 595.]

Hours of Sale.

At the time of the hearing in this matter, Respondent published six editions of its newspaper. The Press starting time on these editions determined their availability for sale. The Press starting time for the first edition was 9:00 o'clock A. M. and for the last edition 5:00 to 5:15 P. M. [R. 546, 547.] The time of the delivery of the various editions to the various newsvendors, of course, depended upon the location of the respective spots and the distance thereof respectively from the publisher's

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[6]Newsvendor Relish borrowed $100.00 from his brother to purchase his corner at Fifth and Spring in approximately 1934. [R. 736.] Newsvendor Bryant purchased his corner at First and Broadway in 1939 from Newsvendor Faber for $600.00 and sold the corner he formerly owned at Third and Broadway to Newsvendor Faber for $250.00. [R. 922, 923.] Newsvendor Schullman purchased his corner at Seventh and Spring Streets in 1925 from the former owner for approximately $1200.00. [R. 931.] Newsvendor Gallagher purchased his corner at Seventh and Main approximately twenty years before the date of the hearing for $300.00. [R. 939.] Newsvendor Newman purchased his corner at Fifth and Olive approximately fourteen years prior to the date of the hearing for $250.00. [R. 945.] Newsvendor Powers purchased the corner at Fifth and Spring from the daughter of the deceased former owner for the sum of $150.00. The Bill of Sale for the corner, prepared by the buyer's attorney, was introduced in evidence as respondent's Exhibit No. 5. [R. 481.] It was from this corner, owned by his brother-in-law, Powers, that the organizer of the Newsboys Union, Patrick Comorre, was selling at the time of the hearing. [R. 999 to R. 1002.]

plant or one of its branch offices. Thus, the first edition would be delivered at the various spots all the way from 9:30 o'clock in the morning [R. 598] to 10:30 o'clock A. M. each week day. [R. 638, 645, 647, 682.] The early editions were delivered by respondent's transportation system, and the orders for the respective corners were tied in bundles and dropped on the corners. [R. 645, 646, 682.] The newsvendors knew generally when the early editions would be delivered to the corners and were generally there to receive their orders. However, whether they were there or not, the papers were left on the corners. [R. 646, 647.] Subsequent editions were usually, though not always, delivered, when available, by districtmen. [R. 644, 682, 706.] Many newsvendors sold only the later editions. [R. 700, 711.] Most newsvendors continued selling until 7:00 to 8:00 o'clock P. M. [R. 686, 703, 711.]

Without exception, the supervisory employees of the Respondent, from the Circulation Manager down, testified that newsvendors were not required to and were not instructed to sell newspapers during or for any particular time. [R. 566, 567, 601, 638, 639, 645, 978.][7] District

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[7]District Man Joe Woods testified: "They (newsvendors) know what to do, they are their own boss, and I have never gone around there and bulldozed them or told them to get out and hustle. They came when they felt like it and they quit when they felt like it, and that is all there was to it. I have never told anybody what time to show up, or what time to quit, as long (15 years) as I have been around there." [R. 601.]

Branch Manager Albert W. Brewster testified: "There is no set rule for them. They are on their own. It is up to them to be there if they want to make any compensation for themselves." [R. 645.]

Men, who formed the only direct contact between the newsvendor and the publisher, did not begin supervision of their districts until 1:00 to 2:30 o'clock P. M. in the afternoon of each day. [R. 643, 681, 705.] Therefore, they did not know from personal observation when the vendors appeared on their corners in the mornings. [R. 645, 656, 682, 699, 705.] District Men "checked in" or collected the wholesale price of newspapers, usually in the evening, from approximately 6:00 o'clock P. M. to 8:00 o'clock P. M. [R. 651, 686, 711.] Consequently, they could not personally observe when all vendors quit selling in the evening.

The Branch Managers had no instructions from the Circulation Department as to the hours papers were to be sold [R. 637], and gave no instructions to vendors in this respect. [R. 645.] It is clear that these hours varied widely, depending on deliveries and the number of editions sold. Under the Board's definition of the unit involved R. 112 139, 142], a "full time" newsvendor was one who sold five or more editions per day, five or more days a week. If he sold all editions, he would get his first editions anywhere from 9:30 o'clock A. M. to 10:30 o'clock A. M. and his last edition anywhere from 5:30 o'clock P. M. to 6:30 o'clock P. M. [R. 546, 547, 685.] If he sold only five editions, he would start later or quit selling earlier, depending on which edition he omitted.

Methods Used by Newsvendors in Attracting Customers.

The methods used by newsvendors in attracting customers were devised by the vendors themselves. No instructions were ever given by representatives of this Respondent in this respect. [R. 595, 600.]

Display of Herald-Express and News.

The testimony shows that as a result of conferences between representatives of the Herald-Express and the News, it was decided that, on and after August 25, 1937, neither organization would object to the sale of both these competing newspapers by the newsvendors if such vendors desired to sell both. [R. 555, 1012, 559, 560, 561.]

Shortly thereafter friction arose between the Districtmen for the respective newspapers over the matter of display of these competing publications. Accordingly, the circulation managers of the two newspapers attempted to agree upon some fair method of display of both newspapers and came to an understanding ". . . . that it would be well to have the News folded on the outside of the Herald . . . . so this appeared to be a fair arrangement and we asked the newsboys in general to cooperate with us to that end." [R. 563.]

When representatives of the News complained to the Circulation Manager of the Herald-Express that newsvendors were not giving the News proper display, he ". . . . notified the branch managers to instruct his district managers to talk to the newsboys, telling them that

that was not fair, not in accordance with the understanding, and to give the News their outside display." [R. 564.]

Several newsvendors testified to conversations regarding the method of holding the two competing newspapers, which took place at or about the time newsvendors commenced to sell both newspapers in 1937; but there was no testimony concerning any discussions or suggestions concerning the display of these newspapers in the years intervening between 1937 and June, 1940, the date of the hearing before the Trial Examiner.

Display of Advertising Matter.

The record discloses that the Circulation Department of the Herald-Express had distributed display cards since 1920, to advertise features and events in the newspaper. These cards aided considerably in increasing and holding the circulation of the paper. They were prepared at the expense of the Respondent and newsvendors were charged nothing for their use. The cards had been used so long no instructions were necessary as to their use. [R. 1034, 1035, 1036.] That such cards did increase the sale of the newspaper and thus augmented their earnings was admitted by the vendors. [R. 768, 813, 839.]

The Newsvendors' Profit.

Newsvendors purchased their papers at wholesale and retailed them at a higher price, making the difference as their profit. Title to the newspapers passed to the vendors upon delivery and they bore the loss for any papers lost, stolen or otherwise unaccounted for. Likewise, they extended credit to retail purchasers on their own responsibility and assumed all credit losses.

The vendors had "established" or "base" orders, which orders could be regulated from day to day. In the downtown district and some other districts, where adequacy of transportation permitted, orders were also regulated from edition to edition. Thus, during the period in question, Respondent made thirteen "deliveries" and "follow-up deliveries" per day in the downtown district. [R. 1048, 1049.] There was no comparable distribution in outlying districts; consequently changes in base orders, received after the papers had already been dispatched, could not be made until the next day. [R. 1049.]

Extra papers, over and above the "standing" or "base" daily order, were made available by the District Man from the truck delivering each edition. [R. 1051.]

If an unusual news story broke, efforts were made by the Circulation Department to ascertain probable extra requirements by telephone canvass of the Superintendent of Downtown Street Sales and Branch Managers and District Men working under them. This canvass, in a large measure, determined the printing of "extras" of each edition. [R. 1046, 1047.]

The "base" order did not represent a minimum required to be sold, as even such base orders varied from day to day, the Saturday order being invariably much lower than the orders on other days. A base order simply represented ". . . a form of intelligent shipping directions . . ." and provided information for determining the number of papers to be printed and distributed. [R. 1045, 1046.]

A base order actually represented the regular sale of a particular corner. This more or less regular street

circulation did not necessarily mean that the same number of papers were sold each day to the same individuals, but, with a considerable degree of regularity, many of the buyers were the same each day. When a news story broke that was of prime interest, the sales on each corner increased considerably and that accounted for the daily fluctuation in sales on the corner. This fluctuation did not, however, affect the number of sales to the regular customers. [R. 1045.]

Due to the uncertainty of news breaks and the rapidity of printing and distribution, there was no way in which individual newsvendors' possible orders of extras could be ascertained in advance, but some information as to possible requirements were secured by the telephone canvass above mentioned. Consequently, when the District Men went out on their routes, they carried the corner vendors' regular orders and, in addition, a quantity of extra newspapers, sufficient to supply the estimated extra requirements of the vendors. In the event the corner vendor was off his corner or other reasons did not permit the ascertainment of the vendors' exact requirements, the District Man would, as a matter of course, drop off sufficient extra papers to meet the estimated demand. In the downtown district where return of all unsold papers for credit was accepted by Respondent, the vendors were requested to carefully regulate their orders to avoid waste of newsprint. [R. 1032.]

In some of the outlying districts, returns were not accepted. Consequently, it was up to the vendor to regulate his base order and his orders for papers over and above his base order so that he would not sustain loss. In this instance again, however, regulation of the base order would be made from edition to edition, if time and dis-

tribution facilities permitted. [R. 648, 649, 709, 1048, 1049.] However, all unsold "Extras" were returnable for credit, in all districts. [R. 709, 710, 851, 944, 952.]

Sales of Other Publications.

Every newsvendor testifying in this matter admitted selling, in addition to Respondent's publication, at least one of the competing publications. The Board found that as a general practice newsboys sold more than one newspaper and handled magazines. [R. 106.] In addition to the Herald-Express, most newsvendors testifying in this matter, sold the News, the Examiner, the Times, and one or more of fourteen other newspapers and magazines, including Liberty, Collier's, Saturday Evening Post, Look, The People's World, Los Angeles Daily Journal, Wall Street Journal, Time and "Ham and Eggs." Some of them sold "New Year Editions" of newspapers competing with this Respondent's publication, and "Rose Bowl" post card folders and souvenirs. [R. 714, 718, 727, 744, 746, 793, 818, 830, 841, 849, 866, 875, 879, 896, 922, 932, 940, 945, 981, 1027.]

Other Business Activities.

Newsvendor Kahn admitted that during the time he was engaged in selling newspapers on his corner, he was also engaged in "book-making" activities, that is, taking bets on horse races. [R. 905, 907.]

Vendor Relish, for a year or two prior to the date of the hearing, had been engaged one to three times a week during the hours of publication of Respondent's publication, on at least five enumerated downtown corners, in delivering and selling to newsstands and customers two Jewish language newspapers, the "B'nai B'rith" and the "Jewish Voice." [R. 977, 978.]

Employment of Assistants by Newsvendors.

Newsvendors on the more profitable corners hired assistants, paying them by the hour or on a commission basis. They hired and fired such assistants at will and made their own arrangements as to hours of work and compensation. Newsvendors, generally, hired their own relief men and made their own arrangements as to compensation.[8]

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[8]The witness, Schullman, employed five assistants to whom he paid a commission [R. 931] and testified that he had the right to and did hire and fire them at will [R. 937.] Witness Gallagher employed five assistants on a commission basis [R. 939], and stated that he had employed at least five assistants at all times during the twenty year period in which he operated on his corner and that at no time had a district manager ever said anything to him concerning his employees. [R. 943.] The witness Klein testified that he employed two boys who worked after school; that he had a delivery route, in addition to his corner, and he paid one boy thirty-five cents an hour to cover his corner while he took care of his route, and the other boy worked traffic for him at thirty-five cents an hour. He paid his relief man according to the hours worked at the rate of thirty cents an hour. [R. 982.] The witness Spillers also employed one assistant [R. 882]. The organizer of the Union, Pat Comorre, sold papers for his brother-in-law, Powers, who owned the corner. [R. 1009.] The witness, Nickerson, operated the same corner for the owner during the owner's illness and after the owner's death his daughter sold the same to Powers. [R. 1008.] The witness Comorre sold newspapers every evening on Powers' corner; he would work the corner and Powers the traffic zone or vice versa; his eldest boy also worked the corner; he never asked anyone's permission for himself or his son to sell papers on that corner and Powers hired and fired his own assistants. [R. 1004, 1005.] The witness Relish picked his own relief man, who also worked for Relish several hours a day once or twice a week while Relish was away. [R. 738.] The witness Faber testified he picked his own relief man and paid him a regular stipulated wage for that service. [R. 720.] The witness Gish sold papers at Sixth and Spring streets for the owner of that corner and regularly sold the Examiner and Times in the morning. [R. 741, 743.]

I.

NEWSVENDORS ENGAGED IN VENDING THIS RESPONDENT'S NEWSPAPER, UNDER THE CIRCUMSTANCES DISCLOSED IN THE RECORD IN THIS CASE, ARE NOT, IN SO FAR AS THEIR NEWSVENDING ACTIVITIES ARE CONCERNED, EMPLOYEES OF THIS RESPONDENT WITHIN THE MEANING OF THE ACT.

1. The Meaning of the Word Employee Is a Judicial Question, and the Determination by the Board of the Status of Vendors in This Case Is a Conclusion of Law Which Is Not Binding on the Court.

The Board found "as a conclusion of law" that by refusing to bargain collectively with its employees in an appropriate unit, the Respondent had engaged in an unfair labor practice within the meaning of Section 8(5) of the Act. [R. 475.] However, if the newsvendors are not employees and this Respondent is not their employer, there was and can be no unfair labor practice or violation of the Act, and the Board was without authority to proceed under Section 10 of the Act.

There seems to be general unanimity among the Courts on the principle that administrative determinations of law are subject to complete review by the Courts.[9] If the finding by the Board of employment is a conclusion of law, the same is subject to such complete review.

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[9] *Brotherhood of Railway and Steamship Clerks, etc. v. United Transport Service Employees* (U. S. App. D. C.), 137 Fed. (2d) 817, 820; *Warner Co. v. Norton* (C. C. A. 3), 137 Fed. (2d) 57, 58; *Jacksonville Paper Co. v. National Labor Relations Board* (C. C. A. 5), 137 Fed. (2d) 148, 150.

The distinction between a finding of fact and a conclusion of law may usually be determined by a consideration of the means by which a result is attained. Thus, if from the evidence, the result can be reached by the process of reasoning adopted in the investigation of truth, it becomes an ultimate fact, to be found as such. If, on the other hand, resort must be had to the processes of the law in order to reach a final determination, the result is a conclusion of law.

We submit that the determination of the meaning of the word "employee" compels a resort to the processes of the law, and that hence the determination of that meaning is for the Courts.

Counsel for the Board contend that ". . . whether *particular facts* brought a person within statutory language was a matter of judgment on which the decision of the administrative official was to be accepted; if supported by evidence in the record . . ." (Petition for Certiorari, p. 16.)[10]

In other words, that having arrived at certain "particular facts," by the process of reasoning adapted to the investigation of truth, the Board was authorized to construe the statute, determine its scope and extent, the legal meaning of the words and phrases used therein, and to determine, upon the basis of the "particular facts" already found by it, that such facts brought a person within statutory language, *i. e.*, that such person was an employee within the meaning of the Act. We think it clear that in order to determine whether certain facts bring

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[10]Emphasis here and elsewhere throughout this Brief, ours unless otherwise noted.

a person "within statutory language," the meaning of that language must first be determined, and that determination can only result from application of the processes of the law.

Justice Waller, of the Fifth Circuit, stated the principle as follows:

> "It is not for this Court to say that the Examiner and the Board were in error in believing the testimony of one witness over another. That is the peculiar province of the Board. But the Court is not without power to interpret or construe the testimony of the witnesses whom the Board and the Examiner have chosen to believe. It is within the province of the Court to determine whether or not words spoken and actions taken amount, as a matter of law, to unfair labor practices under Section 8 of the Act."[11]

This same principle was followed by the Supreme Court of the State of California, in a case determining the status of "newsboys" under the Workmen's Compensation Act of that State. The Act provided that the findings and conclusions of the Commission on questions of fact were final and conclusive.[12]

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[11] *Jacksonville Paper Co. v. National Labor Relations Board*, 137 Fed. (2d) 148, 150 (Cert. Den. 64 S. Ct. 84).

To the same effect: *Brotherhood of Railway and Steamship Clerks, etc., v. United Transport Service Employees of America* (C. C. A. D. C.) Aug. 2, 1943, ...Fed. (2d) .....; *Warner Co. v. Norton* C. C. A. 3), 137 Fed. (2d) 57, 58.

[12] Stats. of Calif., 1917, Chap. 856, Sec. 67 (now incorporated in Sec. 5953, Labor Code of Calif.), in part, as follows:

> "The findings and conclusions of the Commission on questions of fact are conclusive and final and are not subject to review. Such questions of fact shall include ultimate facts and conclusions of the Commission ....."

However, the Court held the applicant not to be an employee within the definition contained in the Act[13] and stated:

> "We are satisfied that the finding of the Commission upon the undisputed facts presented before it amounted to an erroneous legal conclusion which this Court possesses jurisdiction to review."[14]

When the question was again presented to the State Courts, in a "newsboy" case, the principle was reiterated as follows: The sole question presented to the Commission

> "and to this Court is a question of law as to whether the injured newsboy came within the category of a compensable employee, within the meaning and intent of the Workmen's Compensation Act, or at the time of his injury, he occupied the relation analogous to that of independent contractor in the vending of the newspapers."[15]

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[13]Stats. of Calif., 1917, Chap. 856, Sec. 8(a). "The term 'employee' as used in Sections Six to Thirty-one, inclusive, of this Act shall be construed to mean: Every person in the service of an employer as defined by Section Seven hereof under any appointment or contract of hire or apprenticeship, express or implied, oral or written."

[14]*New York Indemnity Co. v. Industrial Accident Commission*, 213 Cal. 43, 49, 1 Pac. (2d) 12, 15.

[15]*Hartford Accident and Indemnity Co. v. Industrial Accident Commission*, 123 Cal. App. 151, 153, 10 Pac. (2d) 1035, 1036. See also *Maltz v. Jackoway-Katz Co.* (Mo. 82 S. W. (2d) 909, 913; *Leigh Aitchison, Inc. v. Industrial Commission* (Wis.), 205 N. W. 806, 808.

The Court annulled the award of the Commission, saying:

> "The finding of the Commission upon the facts present before it amounted to an erroneous legal conclusion whch this Court possesses jurisdiction to review."

At the time of the passage of the Act (1935), the legislative device of curtailing judicial review was not new and untried legislation. The provision had been a feature of many Workmen's Compensation Acts and like legislation for many years, and was familiar both to members of Congress and to State Legislators. For instance, such a provision was added to the Compensation Act of the State of California in 1917, and its non-application to a determination of employee status adjudicated as early as 1931.[16] The Courts of California and other states have consistently held that a reviewing Court, bound by the fact findings of an administrative body, if supported by substantial evidence, is not bound by a finding that such facts establish an employer-employee relationship, because that is a conclusion of law to be determined by the

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[16] *New York Indemnity Co. v. Industrial Accident Commission, supra.* See also *Hartford Accident and Indemnity Co. v. Industrial Accident Commission* (Calif.), 10 Pac. (2d) 1035, 1036; *Maltz v. Jackoway-Katz Co.* (Mo.), 82 S. W. (2d) 909, 913.

Courts.[17] Congress must be presumed to have used the clause in the sense established by judicial decisions thereon.[18] In directing that "The findings of the Board as to facts if supported by evidence, shall be conclusive."[19] Congress must have intended to limit the conclusiveness of the Board's findings to those findings already established by the Courts as factual. Certainly it cannot be urged, in view of the judicial history of similar clauses, that Congress, in drafting the clause in the usual and customary language of such clauses, intended to extend the conclusiveness of the Board's findings to matters already well established by judicial definition as matters of law. Nor did it intend to substitute the judgment of the Board on such matters for the judicial judgment of the Courts.

We do not believe that the limitation of judicial review of administrative findings discussed in *Gray v. Powell*[20] militates against this view. The Bituminous Coal Act of 1937 provided a means of exempting from its provisions coal produced by a consumer. This Act exempted

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[17]*Miller & Lux, Inc. v. Industrial Acc. Comm.*, 179 Cal. 764, 178 Pac. 960, 961 (1919); *Angel v. Industrial Comm.*, 64 Utah 105; 228 Pac. 509, 510 (1924); *Maltz v. Jackoway-Katz Cap. Co.*, 336 Mo. 1000; 82 S. W. (2d) 909, 913 (1935); *W. T. Congleton Co. v. Bradley*, 259 Ky. 127; 81 S. W. (2d) 912, 914 (1935); *Krause v. Dept. of Labor* (Wash.), 97 Pac. (2d) 1082, 1083 (1940); *Van DeGarde v. Osceola County Coop. Creamery Assn.* (Iowa) 4 N. W. (2d) 234, 236 (1942); *Williams v. Brannum* (Okla.) 134 Pac. (2d) 352, 354 (1943).

[18]*Aetna Life Insurance Co. v. Hooker* (C. C. A. 6), 62 Fed. (2d) 805 (Cert. Den. 77 L. Ed. 1494); *Haskell v. Aluminum Co. of America* (D. C.—Mass.) 14 Fed. (2d) 864, 867; *Eastman Kodak Co. v. District of Columbia* (U. S. C. A.—D. C.) 131 Fed. (2d) 347.

[19]Sec. 10(e) of the Act.

[20]314 U. S. 402.

"coal consumed by the producer"[21] and further provided for a hearing by the Commission upon verified application of the producer to determine that certain "commerce in coal is not subject to the provisions" of the Act.[22] A previous Act passed in 1935 had defined "Captive Coal," that is producer-consumed coal, but in the 1937 Act a proposed definition inserted in the Senate had been stricken out in conference. Here was an Act regulating a single industry, designed to remedy chaotic conditions in the bituminous coal market. It was apparently believed by Congress that producer-consumed coal did not have a disturbing effect on such market. But it also apparently believed that the question of what constituted "consumer-produced coal" which would not disturb the market could best be decided by experts in the coal marketing field. It, therefore, expressly delegated that determination to the Commission, and it deliberately refrained from attempting to define the term itself. This term had no particular history, judicial or legislative. The type of regulation contemplated by the Act was comparatively new and untried. Previous legislation had failed. And apparently Congress had determined that its definition of "Captive Coal" in the 1935 Act was ineffectual. There could be, therefore, no contention that the words "coal consumed by the producer" had any well-known or judicially established meaning and Congress was manifestly uncertain as to what coal should be included within the language used. The express delegation by Congress of the power to determine the scope and extent of the exclusory words is the

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[21]Sec. 4-II(1)—50 Stats. at L. 72—Chap. 127.

[22]Sec. 4-a.

feature of the case which differentiates it from the case at bar. The Bituminous Coal Act of 1937 is intended, as its title indicates, to regulate the sale and distribution of *bituminous* coal in interstate commerce. If the National Bituminous Coal Commission created by the Act of 1937 would now hold a hearing at which it would determine that Congress, though it used the word *bituminous*, intended to regulate the sale and distribution of all coal, and that consequently the Commission's jurisdiction and control extended to the complete series traceable from the cellulose of wood through brown or lignite coal, soft or bituminous coal, hard or anthracite coal, to and including the final product of that decomposition, graphite, a situation more comparable to the action of the Board in this case would be presented. Evidence that bituminous coal is actually an intervening product between cellulose and graphite, and closely related in structure and essence to those products, that the waste of cellulose, lignite, anthracite and graphite, might "waste the coal resources of the Nation and disorganize, burden and obstruct interstate commerce," followed by a statement of the Commission that "We do not herein pass upon the nature of (cellulose, lignite, anthracite, graphite) for other purposes but hold upon this record that (cellulose, lignite, anthracite, graphite) are within . . . this Act," would hardly support the extension of the Commission's jurisdiction to those industries. Nor would the argument—Where anthracite and lignite dealers function in a realistic economic sense as members of the coal industry, Congress intended them to be within the Act,—carry conviction, in the face of the plain language of the Act. It seems clear that Congress granted the Commission jurisdiction only over the "bituminous" coal industry, and that the Com-

mission could not, by finding as a fact that anthracite and lignite are coal and almost the same as bituminous, arrogate to itself jurisdiction over and control of commerce in those fields.

The aforegoing illustration serves to point up the distinction between the action of the Commission, considered in *Powers v. Gray*, and the action of the Commission in this case, as we see it, viz: The Bituminous Coal Commission determined a matter expressly delegated to it by Congress, within the outer periphery of the jurisdiction granted to the Commission by and determined and limited by Congress. In the instant cause the Commission, without express or implied delegation by Congress of the right so to do, has arrogated to itself the power to extend the outer periphery of its granted jurisdiction beyond the limits fixed by Congress.

Congress delegated to the Bituminous Coal Commission not only the express power to determine facts, but the right, in a sense legislative, to fix and determine the standard or rule by which the facts found would be measured. In the instant cause Congress gave no express delegation of the power to determine whether any individual was or was not an employee and saved to itself and, by defining "employee," exercised its right to fix and determine the standard or rule by which the facts found would be measured.

In *Shields v. Utah Idaho Central R. Co.*, 305 U. S. 177, the Court had before it the effect of a determination by the Interstate Commerce Commission, for the purposes of the Railway Labor Act,[23] that the railroad company was not

[23] 48 Stats. at L. 1185—Chap. 691—45 U. S. C. A., Sec. 151.

an interurban railway. The Railway Labor Act, applying to railroads engaged in interstate commerce, excepted any "interurban electric railway not a part of a general steam-railroad system," and expressly delegated to the Interstate Commerce Commission the right and duty "to determine after hearing whether any line operated by electric power" falls within the exception. However, an excepted interurban railroad became subject, in so far as the labor relations with its employees were concerned, to the National Labor Relations Act. The two Acts, the Railway Labor Act and the National Labor Relations Act, covered the entire field of railway labor.

Thus a determination by the Interstate Commerce Commission that a particular line was "interurban" and thus excluded from the Railway Labor Act, had the effect of a finding that the line was subject to the National Labor Relations Act. A determination that such line was not "interurban" would bring the line within the effect of the Railway Labor Act and within complementary exclusory language in the National Labor Relations Act. Hence such expressly delegated determination was exercised within the jurisdictional periphery of the two Acts and could not extend beyond the field of inquiry delegated to the Commission.

In *Rochester Telephone Corp. v. United States*,[24] the Court considered the determination of an administrative body that a telephone company was under the control of another and hence not within the exception contained in the Communications Act of 1934. The Act expressly invested that Commission with the duty of ascertaining "control" of one company by another.

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[24] 307 U. S. 125.

On the other hand, where Congress has not delegated such power, this Court has held its exercise not to be conclusive on the Court. In *United States v. Idaho*,[25] the Court had before it a determination by the Interstate Commerce Commission. The Interstate Commerce Act prohibited a carrier from abandoning any portion of its line without permission of the Interstate Commerce Commission, but provided that this "authority of the Commission" should not extend to the abandonment of a "spur" track. The railroad obtained permission from the Commission to abandon a certain line, the Commission holding that the latter was not a "spur" track. The lower Federal court considered the evidence before the Commission and new evidence and enjoined enforcement of the Commission's order, holding that the line was a "spur" track. The Court affirmed the granting of the injunction and said:

> "Appellants object that, since the findings and order of the Interstate Commerce Commission were made on substantial evidence, they are conclusive . . ."

The Court refuted this contention, saying:

> ". . . whether certain trackage is a 'spur' is a mixed question of fact and law left by Congress to the decision of a court—not to the final determination of either the federal or a state commission."

We submit that the question of "employee" status in this case is one of law, and that the same is subject to complete review by this Court, under the doctrine of *United States v. Idaho*.

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[25] 298 U. S. 105.

2. The Definition of "Employee" Contained in the Act Shows Clearly the Intention of Congress to Use the Term in Its Ordinary and Conventional Sense, Except as Modified by Specific Inclusions.

An examination of the definition of "Employee" in the Act clearly shows an intention to use that term in its ordinary and conventional sense. Although Congress used the term "workers" in Section 1 of the Act, this term did not and was quite apparently not intended to enlarge the scope of the Act. It will be noted that in all operative (as distinguished from the "recital" clause in Section 1) portions of the Act, Congress used the term *"employee."* Thus, in Section 2 of the Act, Subd. 3, the term *employee* is used in the definition. In Section 7, *employees* are given the right of self-organization, and in Section 8, the unfair labor practices described occurred only when an *employer* interferes with the rights of *employees* granted in that Section, or refuses to bargain with representatives of *employees.*

At the time of the passage of the Act, there were many strikes existing and threatened. Congress plainly desired to make the benefits of the Act available to employees on strike and to employees discharged because of Union activities. Moreover, Congress was well aware of the craft character of some Union organizations and the necessity of making available to such crafts the benefits of united action of a group of employees not necessarily employed by a single employer. Congress then declared, in Section 2 of the Act, the term "employee"

(a) Shall include any employee, and

(b) Shall not be limited to the employees of a particular employer unless the Act explicitly states otherwise, and

(c) Shall include any individual whose work has ceased as a consequence of or in connection with any current labor dispute or because of an unfair labor practice and who has not obtained any other regular or substantially equivalent employment,

(d) But shall not include any individual employed as an agricultural laborer or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

It seems apparent that the use of the language hereinabove set apart in subdivisions (b) and (c) clearly expresses the intention to use the word in its ordinary and conventional sense. If this were not so, and if it was intended that the meaning of the word be extended to the limits of administrative imagination, there would have been no need for the express language hereinabove set apart. Congress realized that the word "employee," in its conventional and ordinary significance, might not encompass an employee whose status as such had ceased by reason of discharge, and certainly there must have been uncertainty as to the employee status of strikers. Congress dispelled any doubts on these scores by expressly including in its definition the individuals in these classifications. Congress just as carefully extended the benefits of the Act to employees as a class, rather than limit the sanction of concert of action to the employees of a single employer. It then, in the exercise of its legislative discretion, excluded certain employees, not because of any doubts of their status as such, but because Congress did not wish to extend the benefits of the Act to the employees in the named categories. Thus, the first part of the definition and the exclusion clause follow a familiar

pattern, duplicated in many other state and Federal enactments. The balance of the Section demonstrates the clear expression of the desire of Congress to extend the usual, common and accepted meaning of the term to include certain specific classes of individuals who would otherwise be excluded, and imposes a precise and carefully limited inclusion. Under familiar rules of statutory interpretation, the inclusory language above noted forbids interpretative extension beyond the limit set by Congress.

(a) Except as Congress Has Written Into the Act Different Standards, the Federal Rules Protecting the Federal Rights Created by the Act Are Fashioned From the Common Law.

In *Bailey, Adm'x v. Central Vermont R. R. Inc.*, 319 U. S. 350, 352, the Court said:

> "The rights which the Act (Federal Employers' Liability) creates are Federal rights protected by Federal rather than local rules of law (citing authorities) and those Federal rules have been largely fashioned from the common law (citing authorities), except as Congress has written into the Act different standards (citing authorities)."

(b) The Legislative Authority Uses Words in Their Ordinary Sense and With the Meaning Commonly Attributed to Them.

In *U. S. v. First Nat'l Bank*, 234 U. S. 245, the Court said at page 258:

> "That this *natural and usual signification* of plain terms is to be adopted as the legislative meaning in the absence of a clear showing that something else was meant, an *elementary* rule of construction frequently recognized and followed in this Court."

In *Von Weise v. Commissioner of Internal Revenue* (C. C. A. 8), 69 Fed. (2d) 439 (Cert. Den. 292 U. S. 665), the Court said:

> "One of the cardinal rules for construing statutes is that the words used are to be given *their common-ordinary meaning* in the absence of indication in the statute or in the surrounding circumstances to the contrary; but if a definition of the word is given in the statute, that definition is controlling."[26]

(c) Where Words Used in a Statute Have Received Judicial Definition, the Legislative Authority Will be Presumed to Have Known of Such Definition and to Have Intended the Words to Receive the Same Construction.

In *Kepner v. U. S.*, 195 U. S. 100, the Court, at page 124, stated the rule as follows:

> "It is a well settled rule of construction that language used in a statute, which has a settled and well known meaning sanctioned by judicial decision, is presumed to be used in that sense by the legislative body."

In *U. S. v. Merriam*, 263 U. S. 179, 187, the Court said:

> "The word 'bequest,' having the judicially settled meaning, which we have stated, we must presume it was used in that sense by Congress."

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[26]To the same effect see *McDonald v. U. S.* (C. C. A. 8), 89 Fed. (2d) 128, 133 (Cert. Den.—301 U. S. 697); *Sanborn v. Commissioner* (C. C. A. 8), 88 Fed. (2d) 134, 137 (Cert. Den.—301 U. S. 700); *Hearst Publications, Incorporated, et al. v. National Labor Relations Board*, 136 Fed. (2d) 608, 612. [R. 1848.]

In *Aetna Life Ins. Co. v. Hooker* (C. C. A. 6), 62 Fed (2d) 805 (Cert. Den.—289 U. S. 748), the Court said at page 806:

> ". . . . We think that the legislature must be presumed to have had knowledge of the fact of the earlier judicial definition and to have intended that the language used in the Act should be given exactly the same construction."

In *Haskell v. Aluminum Co. of America*, 14 Fed. (2d) 864, the Court said:

> "It seems to be too firmly established to admit of argument that in statutes affecting venue the word 'found' has been given a definite legal signification when applied to foreign corporations, and it will be presumed that when Congress enacted the Clayton Act, it used the word as defined by the Courts."

In *Eastman Kodak Co. v. District of Columbia* (U. S. App. D. P. C.), 131 Fed. (2d) 347, at page 348, the Court said:

> "It has been consistently held that, unless a different legislative intention appears, the geographical 'source' of income from the manufacture and sale or purchase and sale of goods is the jurisdiction where the sale is made. Congress must be assumed to have written the District Revenue Act in the light of the authorities."

(d) The aforegoing Presumption Must be Indulged by the Courts.

In *Levy's Lessee v. M'Cartee*, 6 Peters (31 U. S.), 102, 110, the Court stated the rule as follows:

> "The legislature *must be presumed* to use words in their *known and ordinary* signification, unless that sense be repelled by the context."

The Court below in this cause followed the rule so announced, saying:

> "Since the term 'employee' is not defined in the Act, we agree with petitioner's contention that it must be given its conventional meaning as developed under the common law and statutory enactments." [R. 1843, 1848.]

3. In Construing Cognate Social Legislation Containing No More Specific Definition of the Word "Employee" Than Is Contained in the Act Here in Question, the Courts Have Declared That Congress Used the Word in Its Ordinary Accepted and Conventional Sense.

(a) Social Security Act.[27]

Anglin v. Empire Star Mines Co. (C. C. A. 9), 129 Fed. (2d) 914, 916:

"Applying the ordinary legal tests as the statute appears to have intended, the trial court concluded

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[27] Social Security Act, 53 Stat. 1400; Sec. 905(a); 42 U. S. C. A. Sec. 1011(b):

"The term 'employment' means any service of whatever nature performed within the United States by an employee for his employer, except . . . . (naming exceptions)."

that the Leasers were independent contractors . . . However, in defining the required relationship . . . the regulations do no more than reiterate the familiar principles of the common law."

Williams v. U. S. (C. C. A. 7), 126 Fed. (2d) 129, 132 (Cert. Den.—317 U. S. 655):

"It has been held by this and other courts that employment within the meaning of the statute connotes the legal relationship of employer and employee as those terms were defined and understood at the time of the enactment—furthermore, that an independent contractor is not an employee."

U. S. v. Griswold (C. C. A. 1), 124 Fed. (2d) 599, 601:

"We held that 'an employee is one who meets the test of the more or less established concept of the 'legal relationship of employer and employee.' . . .

"The relationship of employer and employee in the ordinary sense does not exist here."

Deecy Products Co. v. Welch (C. C. A. 1), 124 Fed. (2d) 592, 597:

". . . The words 'employ,' 'employer' and 'employee' are to be taken in their ordinary meaning. It seems clear that the question whether a person is an employee in all cases turns on the existence of the more or less established concept of the 'legal relationship of employer and employee.' "

Jones v. Goodson (C. C. A. 10), 121 Fed. (2d) 176, 180:

"It must be presumed that Congress was cognizant of its well-established principles at the time of the enactment of the statute and that if different guides were intended for ascertaining whether the relationship of employer and employee existed between parties in the application of the statute, appropriate language would have been used to indicate such purpose. There is nothing in the act or its legislative history which indicates such an intent."

Indian Refining Co. v. Dallman (C. C. A. 7), 119 Fed. (2d) 417:

"There is nothing in the Social Security Act which suggests that the terms 'employer' and 'employee' should receive anything but their *ordinary construction*."

(b) Federal Employers' Liability Act.[28]

Robinson v. B. & O. R. R., 237 U. S. 84, 94:

"We are of the opinion that Congress used the words 'employee' and 'employed' in the statute in their *natural* sense, and intended to describe the *conventional* relation of employer and employee."

See, also:

Hull v. P. & R. Ry. Co., 252 U. S. 475, 479;

Wells Fargo v. Taylor, 254 U. S. 175, 187.

[28]Federal Employers' Liability Act, 53 Stat. 1404, Sec. 1; 45 U. S. C. A., Sec. 51:

"Every common carrier . . . shall be liable in damages to any person suffering injury while he is employed by such carrier . . ."

(c) Fair Labor Standards Act.[29]

Bracey v. Luray, (C. C. A. 4), 138 Fed. (2d) 8, 10:

"It is elementary in the construction of statutes that words are to be given their 'natural, plain, ordinary and commonly understood meaning,' unless it is clear that some other meaning was intended . . ."

Bowman v. Pace Co. (C. C. A. 5), 119 Fed. (2d) 858, 860:

"The strongly contested issue is whether he was an employee of the Pace Company at all . . . It is not the purpose of the Fair Labor Standards Act to create new wage liabilities. . . ."

(d) Federal Safety Appliance Act.[30]

Stevenson v. Lake Terminal R. Co. (C. C. A. 6), 42 Fed. (2d) 357, 358:

"The Congressional failure to define the term 'employee' . . . . has evoked a large amount of litigation. . . . . and the Supreme Court has held that the term 'employee' in the Employers Liability Act describes the conventional relation of master and servant."

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[29]52 Stat. 1060, Sec. 3; 29 U. S. C. A., Sec. 203:

"'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee . . .

"'Employee' includes any individual employed by an employer."

[30]Federal Safety Appliance Act, 27 Stat. 531; 45 U. S. C. A., Secs. 1 to 46: This Act apparently contains no definition of the term.

4. It Has Been Judicially Determined That Newsvendors Selling the Respondent's Publication Under the Conditions Disclosed by the Record Are Not, in so Far as Their Vending Activities Are Concerned, Employees of This Respondent.

The Courts of last resort of various states have had occasion many times to consider the status of newsvendors, not only under the common law but under various forms of "social legislation," notably Workmen's Compensation Acts. As hereinbefore pointed out these Acts were remedial and liberally construed. Moreover, most of such Acts contained provisions making the findings of fact of the body administering the same conclusive upon the Courts. Such was the situation faced by the Supreme Court of the State of California, in *New York Indemnity Co. v. Industrial Accident Commission*, 213 Cal. 43, 1 Pac. (2d) 12; one of the earliest of such cases. The applicant was selling, among others, the newspaper published by this Respondent. The facts were stated by the Court as follows:

> "Eustace had for some time prior to his injuries been accustomed to have delivered to him from a district manager, acting as the representative of both publishing companies in the daily distribution of their respective issues to the newsboys within the district of which he was in charge, the newspapers of said companies. As to the 'Herald' each of these newsboys, including the applicant, paid two cents each for the daily issues of said newspapers, said payments to be made either at the time of receiving the specified number of papers, or at the close of the sales for the day. Eustace was accustomed to take 130 'Heralds' for each day. Any unsold portion

thereof was not returnable. As to the 'Record,' Eustace received as few or as many as he ordered, at the above price, and credit was given to him for returned copies thereof. The daily relations between Eustace and the publishers were created through his contact with the district manager. He was not upon the pay-roll of either publisher and received no salary or compensation directly from either. His daily profits, if any, consisted in the difference between the price paid or to be paid by him for the papers received and the price at which he was permitted by the publishers to sell the same to the purchasing public. There was some dispute in the evidence as to just what amount of control or regulation was exercised over newsboys by the district manager; but the evidence in that regard seems to go no further than the following extent, to wit: That certain specified corners or places upon the public streets were alloted, when unoccupied, to particular newsboys applying for the same, who received instructions from the district manager not to intrude upon or interfere with the corner or place allotted to another. Each particular newsboy was expected and in fact required to be active and vigilant in making sales of a prescribed minimum number of each of said newspapers at or near his designated place; in short, to be a 'hustler' in making sales. Otherwise his allotted place or corner would be given to another newsboy and he would be refused further copies by the district manager. The latter testified that one of his duties as such district manager in the employ of both publishers was to maintain a status of peace and harmony among the newsboys, and to so far supervise their daily conduct in the territory covered by his district as to promote the sale of the largest possible number of copies of each of said newspapers within the said district."

The Court said:

"We are thus brought to what we deem to be the essential inquiry in the instant proceeding, which is as to whether the nature and degree of control exercised by the publishers of the two newspapers involved in this proceeding, through their district manager, was such as would suffice to justify the finding of the Commission to the effect that newsboys, by virtue of such control stood in the relation of employees of the publishers of said newspapers, and as such have a compensable claim for an award arising out of injuries received in the distribution to the public at large of their daily product . . . we are constrained to hold that the limited amount of control which the publishers of these two newspapers undertook to exercise over the newsboys, including Eustace, who daily purchased from their district manager a specified number of copies of their daily issues, for a specific sum, payable in cash or at the close of each day's sales, and who undertook the retailing of the same to such customers among the public at large as they were able to attract or procure at a specified place and price fixed by the publishers, would not as a matter of law be sufficient to constitute such newsboys the employees of the publishers of said newspapers . . . We are satisfied that the finding of the Commissioner upon the undisputed facts presented before it amounted to an erroneous legal conclusion which this court possesses jurisdiction to review."[31]

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[31]Excerpts from the record in this case are included in the Appendix hereto.

The rule in the above case was followed by the Court in *State Compensation Fund v. I. A. C.*, 216 Cal. 351, 14 Pac. (2d) 306, and in *Hartford Accident & Indemnity Co. v. I. A. C.*, 123 Cal. App. 151, 10 Pac. (2d) 1035.

The same position has been taken by the Courts of California in cases not involving claims for compensation under the Workmen's Compensation Act.

Bohanon v. McClatchy Pub. Co., 16 Cal. App. (2d) 188, 60 Pac. (2d) 510;

Rathbun v. Payne, 21 Cal. App. (2d) 49, 68 Pac. (2d) 291;

Butt v. San Diego Pub. Co., 21 Cal. App. (2d) 429, 69 Pac. (2d) 216.

Like rulings on similar factual statements have been made by the Courts of other states.[32]

The National Labor Relations Board reached the same conclusion in the matter of *Houston Chronicle Publishing Company*, 28 N. L. R. B. 1043. As is shown by the record in the *Houston Chronicle* case, there was no material difference in the facts of that case and the facts of this case.[33]

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[32]*Call v. Detroit Journal Co.*, 191 Mich. 405, 158 N. 36; *Oklahoma Pub. Co. v. Greenlee*, 150 Okla. 69, 300 Pac. 684; *Joslin v. Idaho Times Pub. Co.* (Idaho), 53 Pac. (2d) 323; *Bernat v. The Star Chronicle Pub. Co.* (Mo.), 84 S. W. (2d) 429; *Birmingham Post v. Sturgeon* (Ala.), 149 So. 74; *Creswell v. Charlotte News Pub. Co.* (N. C.), 168 S. E. 408; *Florida Pub. Co. v. Lourcey* (Fla.), 193 So. 847; *Balinski v. Press Pub. Co.* (Pa.), 179 Atl. 897; *People v. Masiello*, 31 N. Y. S. (2d) 512.

[33]Quotations from the opinion, exhibits and record in this case are contained in the Appendix hereto.

The aforegoing cases used the conventional "control test"[34] in determining the status of the vendors in question. The record in this case shows no such power of control in this Respondent. It had no power or control over the *means* and *methods* by which vendors sold their papers. It cannot be doubted that it would be impracticable for the Respondent to attempt to control the *means* and *methods* of sale of several hundred vendors, scattered all over the City of Los Angeles, and the record in this case demonstrates that no such control was attempted to be exercised by the Respondent in this case.

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[34]Nothing in the record shows that respondent was in the position of a "master who has the supreme choice, control and direction of the servant, and whose will the servant represents, not merely in the ultimate results of the work, but in all details." (*Childers v. Commissioner*, 80 Fed. (2d) 27, 30.) The control in all details includes control by the employer of the means and method of performance. (*Fidelity & Casualty Co. v. Ind. Acc. Commission*, 191 Cal. 404, 216 Pac. 578.)

Such control as to means and method must be complete. (*Western Indemnity Co. v. Pillsbury*, 172 Cal. 807, 811.)

The same tests are applied in the Federal Courts. In *Radio City Music Hall Comp. v. United States*, 135 Fed. (2d) 715, 717, the Court considered whether performers in vaudeville acts were employees, for which the theater was required to pay tax. The Court said:

> "The test lies in the degree to which the principal may intervene to control the details of the agent's performance; and that in the end is all that can be said, though the regulation redundantly elaborated it. In the case at bar the plaintiff did intervene to some degree; but so does a general building contractor intervene in the work of his subcontractors. He decides how the different parts of the work must be timed, and how they shall be fitted together; if he finds it desirable to cut out this or that from the specifications, he does so. Some such supervision is inherent in any joint undertaking, and does not make the contributing contractors employees."

5. The Relationship Between the Vendors and Publisher Herein Was That of Purchaser and Seller, and the Vendors Occupied the Status of "Sales Agent," as That Term Is Defined by the Courts.

The fundamental error into which the Commission fell in this cause consisted in its failure to discern and give effect to the undoubted "sale" that underlies and gives form and color to the relationship existing between these newsvendors and the various publishers whose publications they sell.

While all Courts considering the problem have not clearly recognized the distinction, the newsvendor status is actually that of "sales agent," as that term is defined by the Courts, rather than that of independent contractor. In most cases involving newsboys, the Courts have approached the problem from the employee-independent contractor viewpoint, though in the leading case, *New York Indemnity v. Industrial Accident Commission*, 213 Cal. 43, 47 it was pointed out that the relationship

> ". . . while somewhat difficult of definition as that of an independent contractor, was more nearly allied to the relation of a sales agent, under the authorities to which we have been cited, than to that of an employee and employer as those terms are defined . . ."

The attempt to fit the relationship into the conventional frame work of "employee" causes considerable distortion, whereas if the relationship is viewed in, what we think to be, its proper perspective, all the elements, tortured and twisted by the Board into elements of "control," fit neatly and compactly into a relationship well known

in the law, and generally called a "sales agency," though it has little semblance of an agency in fact. The relationship is simply a sale of a proprietary article with a right of resale under terms and conditions fixed by the proprietor.[35]

The cases defining the relationship are numerous. Their number demonstrates not only the distinctive character of the relationship but its adoption into all fields of commercial endeavor in the United States.

The rationale of the cases is stated in *W. T. Rawleigh Medicine Co. v. Holcomb* (Ark.), 191 S. W. 215, as follows:

> "One might sell his goods to whom he pleased and might prescribe other exactions in regard to the price to be charged and the manner of reselling

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[35] *1 Mechem on Sales*, pages 41 and 42:

"A qualified form of 'agency' which has grown up in modern times is that which exists when the owner or manufacturer of patented or other proprietary articles grants the privilege of sale or of exclusive territory to one who otherwise might not be at liberty to sell the goods in question. It is entirely consistent with this arrangement that the so-called agent is to buy, of the proprietor or manufacturer, the goods which he is thus authorized to sell, and when this is the fact there is little more of 'agency' in the case than the name itself. It is also entirely consistent with the arrangement that the 'agent' is to sell the goods at a price or upon terms or conditions fixed by the proprietor or manufacturer. A person so situated is often, in popular language, said to have obtained the 'agency' for the goods, when all that is meant is that he has obtained a more or less exclusive right to buy and resell them in a prescribed territory. The transaction is simple enough, but the reports show many cases in which the parties have, perhaps, deceived themselves and have certainly attempted to deceive others by calling that an 'agency' which had no resemblance to agency in fact, but was simply a sale of a proprietary article with a right of resale under terms and conditions fixed by the proprietor."

without changing the character of the transaction as a sale."

While most of the cases arose in connection with the endeavor to fasten on the "sales agent" the character of an agent in fact and there are comparatively few cases involving a comparison between the status of "sales agent," and the status of "employee," the cases are nonetheless pertinent to this inquiry because there is no substantial difference between an agent in fact and a servant or employee.[36]

An examination of these cases discloses that all of the elements here relied upon by the Commission as indicating "control" of an "employee" are common and accepted features of a "sales agency" and do not affect the independent nature of the relationship.

The cases demonstrate that the following conditions of resale are common features of "sales" agencies and do not change the independent character of that sales relationship:

1. Sales are restricted to a certain territory.

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[36] *People v. Treadwell*, 69 Cal. 226, 236:

"True, the words 'agent' and 'servant' are not wholly synominal; *both, however, relate to voluntary action under employment and each expresses the idea of service.* The service performable by a servant for the employer may be inferior in degree to work done by an agent for his principal. A servant is a worker for another under an express or implied employment; so also is an agent, only he works not only for but in place of his principal."

2 *Corpus Juris*, 243:

"In general the principles governing the rights, duties and liabilities growing out of the two relations are the same, and to determine whether a given relation is one of agency or one of service is of no consequence. This results from the fact that the law of principal and agent is an outgrowth and expansion of the law of master and servant."

2. A place of business required to be maintained in the territory.

3. Agent required to diligently work in the sale.

4. Agent required to purchase not less than a specified number of articles during named periods.

5. Agent required to sell the articles at the regular retail price established by the manufacturer.

6. No lesser price be advertised.

7. Agent required to make personal canvass.

8. Agent required to keep complete records.

9. Agent required to report weekly.

10. Agent required to remit one-half of all collections.

11. Manufacturer furnishes blank reports.

12. Manufacturer reserved right to limit sales to agent.

13. Manufacturer gave specific directions how to conduct the business.

14. Manufacturer furnished a book on salesmanship.

15. Manufacturer agreed to accept all unsold goods at the termination of the contract.

16. Sales agent may purchase from manufacturer for cash or on credit.

17. Sales agent required to give his entire time to the business.

18. Manufacturer prohibited invasion of one agent's territory by another.

19. Agent required to pay one-half of cost of advertising in the territory.

20. Manufacturer had many agents engaged under the same arrangement selling the same articles in adjoining territories.

21. Agents generally supervised in their territories by an employee of the manufacturer.

22. Agent required to sell manufacturer's product exclusively.

23. Agent received compensation for procuring other agents.[87]

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[87]In the following cases the conditions of and requirements for re-sale hereinafter noted were held not to change the sales nature of the transaction nor to affect the independence of the sales agent:

Reiter v. Anderson, 87 Cal. App. 642, 262 Pac. 415:

Sale of sewing machines—territory restricted to one county; agent to maintain place of business therein; to diligently work in sale of machines and products; to purchase not less than 144 machines per year or 12 per month, at prevailing wholesale price; if agent orders from branch other than factory, agent to pay freight and drayage costs; agent to sell only at regular retail established price; agent not to advertise any but retail list prices.

Sinnet v. J. R. Watkins (Ky.), 282 S. W. 769:

Sales of medicines and merchandise.—Agent assigned to territory, required to make personal canvass; keep complete records; report weekly and remit one-half of collections; company furnished blank reports; reserved the right to limit sales and kinds of merchandise; gave specific direction how to conduct the business; furnished a book on salesmanship; addressed agent as salesman; agreed to accept all unsold goods on termination of contract.

W. T. Rawleigh Co. v. Trerice (Mich.) 195 N. W. 79:

Merchandise.—Agent required to give entire time to business, make detailed weekly report, sell only in certain locality determined by company. Many other sales agents in surrounding localities sold company's products under same arrangement. Company's representative solicited others to become agents, assigned territories for their operation and solicited their assistance in securing new salesmen, for which they were compensated.

Standard Fashion Co. v. Cummings (Mich.), 153 N. W. 814:

Dress patterns.—Sales agent agreed not to sell agency nor to remove it from original location without consent of company; not to sell or permit to be sold at such location, during contract term, any other make of pattern; not to sell patterns at less than label prices; company to have right to take account of pattern stock at will; agent to pay proper attention to sale of patterns; to conserve best interests of agency, and to reorder promptly all patterns as sold.

W. T. Rawleigh Medical Co. v. Holcomb (Ark.) 191 S. W. 215:

Medicines, extracts and other products.—Company agreed to sell, in such reasonable quantities as agent desired, above

As was stated in *Sinnet v. Watkins, supra*, it is optional with a manufacturer whether he carries on his business through employees or through sales to others

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products and a medicine wagon, partly on credit, agreed to repurchase at current wholesale prices all unsold merchandise; agent agreed to make weekly payments on account; was given exclusive territory, furnished with printed instructions and directions in regard to remittances of money; required to remit one-half of his receipts until his account was balanced. Company assigned exclusive territories to agents and no agent was permitted to invade the territory of another.

Rosenbluth v. Hudson Motor Co., 265 Fed. 680:

Automobiles.—Company gave agent exclusive territory; agent agreed to sell at company fixed net prices within designated territory, subject to adjustment of commission of sale in another's territory, to be arranged under control of company; agent agreed to keep on hand repair parts, prices of which fixed by company; agent to pay one-half of cost of advertising in territory, such advertising to be approved by company; agent to sell company's product only.

To same effect:

Mathews Conveyor Co. v. Palmer Bee Co. (C. C. A. 6th) 135 Fed. (2d) 73, 78.

Bessing v. Prince, 52 Cal. App. 190, 198 Pac. 422;

Piper v. Oakland Motor Car Co. (Ver.), 109 Atl. 911;

Bendix v. Staver Carriage Co., 174 Ill. App. 589, 28 Am. St. Rep. 811;

Mack v. Drummond Tobacco Co. (Neb.) 67 N. W. 174;

Whitman Agricultural Co. v. Hornbrook, (Ind.) 55 N. E. 502;

McGraw v. Hanway (Md.) 87 Atl. 666;

Commercial Credit Company v. Girard Nat. Bank (Pa.), 92 Atl. 44;

Hogg v. J. R. Watkins Medical Co. (Ark.), 288 S. W. 730;

J. R. Watkins Medical Co. v. Hogue (Ark.), 210 S. W. 628;

Three States Buggy and Implement Co. v. Commonwealth (Ky.), 105 S. W. 971;

Barnes v. Maxwell Motor Sales Corp. (Ky.), 189 S. W. 444;

Arbuckle v. Kirkpatrick (Tenn.), 39 S. W. 3;

W. T. Raleigh Co. v. Van Duyn (Idaho), 188 Pac. 945;

Shores-Mueller Co. v. Palmer (Ark.), 216 S. W. 295;

E. A. Lange Medical Co. v. Johnson (Ark.), 197 S. W. 1168;

Raleigh v. Harper (Wash.), 22 Pac. (2d) 665;

J. R. Watkins v. Salyer (Ill.), 49 N. E. 288;

Hendricks v. International Harvester Co. (Ver.), 135 Atl. 702;

Poirier Mfg. Co. v. Kitts (N. D.), 120 N. W. 558.

This Respondent, in the exercise of its undoubted right, has chosen to sell its product to newsvendors upon such conditions of resale as are necessary to the efficient vending of its product.

The aforegoing cases demonstrate that the imposition of such conditions of resale does not change the "sale" character of the transaction nor transform the independent vendors into employees.

6. The Determination That the Vendors Selling Respondent's Publication, in Such Vending Activities Are Not Employees of Respondent, Is Not Affected by the Fact That Some of Such Vendors Received Compensation for Services Performed for Respondent, Separate and Apart From and Having No Connection With the Vendors' Independent Business of Selling Newspapers and Magazines.

The duties of wholesalers have been fully described hereinabove. (See Statement of the Case, *Supra*, pp. 6 to 10.)

The salient points are these:

"That no newsboy receives checks from the petitioner, except and unless he performs functions as a wholesaler [R. 582]; that services as a wholesaler are rendered apart from and have no connection with the wholesaler's own independent business of selling newspapers on his own account and risk. [R. 606.] This is conceded to be so by the wholesalers themselves. [R. 781.] That wholesalers frequently conduct their selling activities for several hours before they commence their wholesaling activities [R. 702, 840], and that they continue their selling activities for some time after they have completed their whole-

saling activities, including checking in to the district managers. [R. 703.] Admittedly the wholesalers are paid a fixed salary by respondent and are carried on its payroll. These facts and others tend to indicate that the wholesalers, to the extent of their wholesaling activities, are employees of the respondent."

The Court below correctly concluded that, though it be conceded that the so-called checkmen are employees of the publisher to the extent that they function as wholesalers, they need not occupy the same status to the extent they function as newsboys. [R. 1851.]

The same conclusion was reached by the Seventh Circuit Court of Appeals in *Ridge Country Club v. The United States*, 135 Fed. (2d) 718, 720. The Court, in holding that in certain of his activities the golf professional was not an employee, although he was an employee in the performance of others, said:

> "The pro sustained a *dual* relationship to the club. Concededly, he was an employee as to the annual retainer, yet an independent contractor when he acted as a shopkeeper and instructor.
>
> "We have not overlooked the fact that these two capacities were bound together by a single contract and that one was dependent on the other. But, looking at the single issue as to the nature of the pro's relationship to the club when giving instructions or operating the shop, we think it clear that he was an independent contractor[38]."

[38]To the same effect see:
State Compensation Insurance Fund v. Industrial Accident Commission, 2 Cal. (2d) 94, 39 Pac. (2d) 201;
Hedge v. Williams, 131 Cal. 455, 457, 63 Pac. 721, 722;
Kipp v. Oyster, 133 Mo. App. 711, 114 S. W. 538;
Stagg v. Taylor, 119 V. 266, 89 S. E. 237.

7. There Is No Substantial Evidence in the Record to Support the Conclusion of the Board That Vendors Selling Respondent's Publication Are, in so Far as Their Vending Activities Are Concerned, Employees of Respondent.

(a) A Finding of the Board Will Not Be Sustained When It Is Not Supported by Substantial Evidence.

If, as a matter of law, a finding is not supported by the evidence it will be set aside by the courts.

Stonewall Cotton Mills v. N. L. R. B., 129 Fed. (2d) 629.

Such finding must be supported by substantial evidence, *i. e.*, "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

Consolidated Edison Co. v. N. L. R. B., 305 U. S. 197, 83 L. Ed. 126, 140;

N. L. R. B. v. Virginia Electric & Power Co., 314 U. S. 469, 476;

N. L. R. B. v. Sun Shipbuilding & Dry Dock Co. (C. C. A. 3), 135 Fed. (2d) 15, 25.

Substantial evidence "must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for a jury."

N. L. R. B. v. Columbian E. & S. Co., 306 U. S. 292, 83 L. Ed. 660, 665.

(b) The Board's Findings of Fact Were Based Upon Isolated Instances Affecting Only a Few Individual Vendors, and There Was No Testimony Whatever That Such Instances Were Matters of General Practice. Hence the Board's Conclusion That All Vendors Selling Respondent's Publication Are Employees of Respondent Is Not Supported by Substantial Evidence. Moreover, the Findings Relied on by the Board Do Not as a Matter of Law Support Such Conclusion.

At the time of the hearing in this matter, there were approximately 2,200 to 2,500 vendors selling Respondent's publication in Los Angeles, on regular spots. This figure did not include newsstands, bootjackers,[39] temporary or casual vendors. [R. 1035, 1036.]

The Board found 219 vendors to be within the unit. [R. 116.] The number determined to be eligible to vote was 209, the number voting 179, and the number of ballots counted was 149. [R. 163.]

At the outset of the hearing, inquiry was made of counsel for the Board concerning the number of witnesses he expected to put on. He wired the Chief Trial Examiner in Washington for instructions and received the following wire:

> "Evidence should be introduced to show that persons signing cards are employees. Burden is on the petitioner to show this fact. I assume respondent denies card signers occupy the position of employees. If so, evidence should be introduced to show that each individual does." [R. 1493.]

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[39]Vendors who buy their papers from the publishing plant and sell them wherever they please. [R. 112—Note 35.]

Counsel for the Board offered 15 witnesses (other than employees of Respondent called by the Board) who sold Respondent's publication.[40]

Respondent called 5 vendor witnesses.[41]

The Board also called William J. Harrison, Circulation Manager, Dave Bell, Superintendent of Street Sales, Gordon F. Norton, "Dealer," Albert W. Brewster, Branch Manager, Jake Gratz, Branch Manager, and Harry Plotkin, Joe Woods, Solly Epstein and Louis France, District Men, out of the 68 district men employed by this Respondent.

Counsel for the Board offered in evidence 171 authorization cards purported to be signed by vendors within the alleged unit. [R. 914.]

Despite the instruction received from the Chief Trial Examiner and in the face of the warning of the Trial Examiner, delivered near the close of the testimony affect-

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[40]Sid Faber [R. 713 to 726].
Harry Relish [R. 726 to 739].
Harry Thomas Gish [R. 739 to 744].
Gene LeRoy Alley [R. 745, 816 to 829].
Arthur Steuart [R. 745 to 792].
David Kadesh [R. 793 to 816].
Phillip Spaminato [R. 830 to 848].
Mike Barrett [R. 848 to 853].
Patrick Comorre [R. 658 to 680, 853 to 865].
Louis Schwartz [R. 866 to 875].
Joe Roth [R. 875 to 879].
Charles C. Spillers [R. 879 to 895].
Sam Kahn [R. 895 to 917].
Gus Georgon [R. 1053 to 1059].
James V. Apice [R. 1117 to 1125].

[41]Ed Bryant [R. 921 to 929].
Willie Schullman [R. 929 to 938].
John J. Gallagher [R. 939 to 944].
Milton Newman [R. 944 to 957].
Maurice F. Nickerson [R. 1024 to 1030].

ing this Respondent, that evidence had not been introduced ". . . to show what each individual does." [R. 1513], no other or additional witnesses were called by the Board.

Although the Board made no effort in its "Decision and Direction of Elections" [R. 76 to 121] to separate the testimony applying to this Respondent from that applying to the other publishers involved in the hearing, it was recognized by the Board that testimony applicable to one publisher was not considered applicable to any other publisher, and the Board's attorney stipulated that the testimony offered in the other cases had no application to this Respondent.[42] Some of the testimony of employees of the News, in so far as it related to conversations had with representatives of this Respondent concerning the sale of both the Herald and the News by the vendors, was admitted against this Respondent.[43] So also certain testimony of a vendor claiming to be a member of the "News" unit, who also sold Heralds, was admitted against this Respondent.[44]

The attorney for the Board, the attaches of the local office of the National Labor Relations Board and the Union organizer and his committee were diligent and persevering in the preparation for the hearing of this matter. According to the number of authorization cards introduced in evidence, they had contacted and discussed the matter of representation with 171 vendors. It may be assumed that the attorney for the Board offered every

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[42]R. 1107, 1113, 1116, 1129, 1145, 1149, 1178, 1231, 1243, 1248, 1294, 1310, 1312, 1328, 1372, 1422, 1432, 1453, 1475, 1492, 1505, 1528, 1554, 1592, 1613, 1619, 1627, 1633.

[43]R. 1055 to 1079, 1079 to 1088.

[44]R. 1123 to 1124.

bit of evidence that industrious and diligent search could uncover. Yet there were only 15 vendor witnesses produced by the Board in the case involving this Respondent to testify to isolated instances of alleged "control." It will be noted that there was no evidence offered by the Board which tended to establish that the alleged instances of "control" were matters of general practice, and in fact most of such alleged instances were categorically denied by the representatives of Respondent alleged to have participated therein. On the other hand, when the Board questioned Respondent's representatives called by the Board, they testified that no such control existed. The findings of the Board and the lack of evidence to support the same are commented upon hereinafter.

The Newsboy Customarily Obtains His Corner or Spot by Making Application at the Plant of the Publisher Where He Consults a District Manager. The Applicant Usually Inquires Whether There Is a Corner or Spot "Open." [R. 95.] ". . . *district Managers of the Companies Allocate Corners and Spots.*" [R. 96.]

The testimony discloses [R. 590, 595, 606, 638, 696] that newsboys wishing to sell papers apply to district managers, in all parts of the city, for openings, meaning unoccupied corners where newspapers had customarily been sold, and if there is such a corner in the district the newsboy is furnished papers. The only district managers who work out of the main plant are the managers of the downtown area. [R. 590.] All others work out of

branch offices. [R. 638, 682, 696.] As hereinabove pointed out, "openings," that is, unoccupied corners, are seldom available in the downtown district, and if they are left vacant it is usually because they are unprofitable. [R. 599.] Profitable corners, on the contrary, pass from buyer to buyer for large sums of money, without the consent or knowledge of Respondent. [R. 1039, 1040.] The witnesses Relish [R. 736], Bryant and Faber [R. 924-926], Schullman, one time president of the Union [R. 930]; Gallagher [R. 939]; Newman [R. 945], and Powers and Comorre, the Union organizer [R. 199], all purchased their corners from previous owners. No one of these newsboys even thought it necessary to consult with representatives of the Respondent in such matters. The witness Comorre testified that the witness Powers bought his corner from the daughter of the deceased former own; that he (Comorre), Powers and Comorre's oldest son all worked the corner and that no one of them ever asked Respondent's representatives to consent to such arrangement. [R. 1004-1005.][45]

Of the 20 vendor witnesses called by the Board and this Respondent, seven had purchased their corners from previous owners.

This finding does not support a conclusion of employment. As pointed out hereinbefore (*supra*, pp. 48-51), the granting of territory by a company to a sales agent is an invariable feature of a "sales agency."

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[45]See also "Statement of the Case," *supra*, pp. 6-10.

Moreover, in the cases dealing with the status of newsvendors, the allocation of territory has been held not to constitute the vendor an employee.[46]

The evidence in this case discloses that if an individual wished to go into the newspaper business on an established spot, he could do it in one of two ways, viz.: buy a good corner from the owner or wait until a corner was abandoned and then take it over. (Of course, if he didn't want an established spot he could "bootjack" papers.) In the second instance, the easiest way to find a corner was to keep in touch with the district man concerning possible openings. In the case of vendor Barrett, he knew it was open so he asked a district manager if he "could take the spot over" and the district manager said "Sure" [R. 848, 849]. Then too, an abandoned corner could be taken over without the intervention of any district man. [R. 969.]

If the finding of the Board means anything other than the mere advising of prospective vendors of the existence of "open" or abandoned spots, it is not supported by the evidence.

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[46]See the following cases more particularly referred to in the Appendix:

New York Indemnity Co. v. Industrial Accident Comm., 213 Cal. 43; 1 Pac. (2d) 12 (1931); *Birmingham Post Co. v. Sturgeon*, 227 Ala. 162; 149 So. 74 (1933); *Creswell v. Charlotte News Pub. Co.*, 204 N. C. 380; 168 S. E. 408 (1933); *Balinski v. Press Pub. Co.*, 118 Pa. Sup. 89, 179 Atl. 897 (1935).

In Matter of *Federal Ice & Cold Storage Co.*, and *Produce Drivers and Employees Union, Local No. 630*, 18 N. L. R. B. 161, 164, certain drivers of ice trucks were required to confine their operations to fixed territories and the Company refused to sell to drivers who failed to abide by this requirement. The Board, in finding that these drivers were *not* employees, declared that this is a "restriction . . . commonly placed on independent dealers by distributors . . ."

"The Record Is Replete With Instances in Which District Managers Have Removed, Permanently or Temporarily, Newsboys From Their Corners or Transferred Them From One Location to Another, for Various Reasons." [R. 100.]

Seven instances are cited in the "Petition for Writ of Certiorari" (p. 8) in this matter. The instances in question show only a reasonable refusal for cause to sell newspapers to certain vendors, or, as like instances were explained by the Board, in the matter of the Houston Chronicle, ". . . . it appears that in fact all that had happened is that their papers were given to other newsboys when they had gotten into trouble and had been unable to sell them."[47]

The record shows (exactly as in the *Houston Chronicle* case), that papers were refused one vendor who was drunk. When he sobered up, papers were again given him. [R. 601.] Papers were refused another vendor, when he failed or refused to pay for papers already purchased. Later on the matter was adjusted and papers were again furnished him. [R 901, 902.] Papers were temporarily refused a vendor when he persisted in selling them for less than the established price. [R. 878.] Another vendor was temporarily refused papers under the following circumstances, detailed by George Hutchinson, a district man [R. 1146, 1147]:

> "I came into the office there one day and found that there had been a report brought in there that he had made improper advances and attempted to molest a juvenile of the opposite sex. The person

[47] 28 N. L. R. B. 1043, 1045.

who had brought in the report and who threatened practically to take the law in his own hands was the girl's father. He said there was considerable feeling in that particular—around that particular neighborhood and corner over it, and there was likely to be some trouble over it; that he wanted to handle it legally. And just about that time we had had the rape and murder of these two little girls in Inglewood, and the city was more or less stirred up along those lines. Therefore I went out to the corner and I told Jimmy that he had best be taken off for the time being until we found out what it was all about; that naturally we didn't want him to wholesale our papers or to sell our papers if he was guilty of such a thing, *and that for his own self protection, it would be very poor policy for him to even hang around the corner for a few days.*"

Thereafter Mr. Hutchinson investigated the matter and, finding no substantial basis for the charge, again furnished papers to the vendor.

In another instance the owner of a drug store on the same corner occupied by the vendor in question, advised representatives of the Respondent that in an altercation in his store, the vendor had held him while another man had hit him over the head with an iron rod. The charge was investigated and it was deemed advisable to locate another corner for such vendor. A better corner was found for him, where he made more money. [R. 769.]

In another instance, a district man received repeated complaints from the owner of a grocery store and others of the uncleanliness and body odor of a vendor selling

in front of the store. The district man gave the vendor money for a bath and also gave him some of his old clothes. He suggested that the man clean himself up. (Action similar to this was characterized by the Board in the *Houston Chronicle* case as a "paternalistic attitude," not control. (28 N. L. R. B. 1043, 1048.) The vendor failed to comply and upon renewal of the complaints he was refused further papers. [R. 741, 743, 968, 972.] At the time of the hearing, this vendor was selling the Examiner and the Times in the morning and was relief man for the vendor owning the corner at Sixth and Spring streets in Los Angeles [R. 967, 969], selling the Herald, News and other publications.

The last instance cited was that involving the witness Relish, who had purchased the corner for $100.00 some six years prior to the date of the hearing. On or about December 21, 1934, a letter was received from the Downtown Business Men's Association, complaining about the activities of this vendor. [Herald Ex. No. 2—R. 483—introduced in evidence at R. 918.] Relish testified that he was told by the Herald Superintendent of Street Sales "that I would *have to get rid of my corner and in the meanwhile to put somebody to stay on my corner until I could get somebody to sell it and get rid of it* . . ." [R. 917, 918.] Relish, however, engaged an attorney who wrote respondent as follows:

> "Harry Relish, who sells magazines and newspapers at the northeast corner of Fifth and Spring

Streets, this city, *tells me that you discontinued selling him your papers* at the written request of the Downtown Business Men's Assn., the latter named being instigated by the Rowan Building . . ."

The attorney further charged a conspiracy to deprive his client of his livelihood. [Herald Ex. No. 4—R. 486—introduced in evidence at R. 1039.] The actvities of Relish and his attorney resulted in the sending of another letter to Respondent by the Association, informing Respondent that in view of the investment Relish had in the corner, he should be entitled to "recover his investment." [Herald Ex. No. 3—R. 485—introduced in evidence at R. 920.] Accordingly, Respondent continued to sell newspapers to Relish.

Only one of these refusals to sell papers was permanent, and that vendor started immediately to sell the Times and Examiner on another corner and to relieve for the regular vendor selling the afternoon papers on the same corner.

No one of these refusals was arbitrary, capricious or unjustified and, in most instances, the refusals grew out of altercations between the vendors and members of the public, a condition affecting the good will of Respondent's publication, in which it had a proper and natural concern.

The aforegoing instances, occurring over a period of five or six years, in a group averaging 171 to 219 vendors, show only isolated instances of reasonable refusal to sell

newspapers to independent vendors or "sales agents" and do not substantiate a finding that all such newsvendors or "sales agents" were subject to "removal at will."

In *Texas Co. v. Higgins* (C. C. A. 2), 118 Fed. (2d) 636, the Court considered whether a distributor for the Texas Oil Company was its employee under the Social Security Act. The Oil Company had the right to terminate the relationship on five days notice and to purchase the distributor's plant at cost. It was contended that thus the company had "absolute power over the business, because by this sanction it could not only intervene when and as it chose, but could direct the details of every move made." (P. 638.)

The Court denied this contention and held the distributor was not an employee. The Court, by Judge Learned Hand, said:

> "The character of the relation was determined by the rights and obligations assumed, and it is no answer that the plaintiff could force a change in these by threatening to terminate the agency. Assuming that Thomas would inevitably have complied with invasions of his rights secured by the contract—which is by no means certain and would obviously depend upon how burdensome these were—legally, the effect would be to force upon him *pro tanto* a new agreement. The plaintiff's power to end the agency was merely a power to free itself from all obligations; it was not a legal power to compel Thomas to assent to new proposals, and it might, or might not, be effective for that purpose. While the agency lasted the plaintiff had no control at all save that reserved

and Thomas was merely a factor receiving goods on consignment, and a factor is not an 'employee' but an 'independent contractor.'" (P. 638.)

Cases dealing with the newsboy status announce the same ruling.[48]

"Generally the Newsboy Is Required to be at His Post From the Time Newspapers Customarily Appear on the Street to the Time Settlement Is Made." [R. 98.]

A complete discussion of the testimony in the record concerning hours of sale is set forth hereinbefore in "The Statement of the Case," under the sub-head "Hours of Sale" (*supra*, pp. 12-14).

Although some newsboys testified that they were "required" to be on the corners between certain hours, most

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[48]In *New York Indemnity Co. v. Industrial Accident Comm.*, 213 Cal. 43; 1 Pac. (2d) 12, 14 (1931), each newsboy was "required to be active and vigilant in making sales . . . Otherwise his . . . corner would be given to another newsboy . . . . . " In *Birmingham Post Co. v. Sturgeon*, 227 Ala. 162; 149 So. 74, 75 (1933), if the newsboy failed to call for his first assignment of papers, another newsboy was assigned to his corner. In *Creswell v. Charlotte News Pub. Co.*, 204 N. C. 380; 168 S. E. 408, 409 (1933), if the newsboys did not stay on the beat assigned or were not active in their efforts to sell papers, "they lost their jobs." In *Bernai v. Star-Chronicle Pub. Co.*, ...Mo. App. .....; 84 S. W. (2d) 429, 431 (1935), if the newsboy failed to conduct his activities "to the entire satisfaction of the companies" then the latter could discontinue supplying him with papers. In *Balinski v. Press Pub. Co.*, 118 Pa. Sup. 89; 179 Atl. 897, 898 (1935), if the newsboy was habitually late at his corner, or sold on a corner assigned to another newsboy, or sold in front of drug stores selling the newspaper, or sold in excess of the fixed retail price, or sold the competing newspaper, or "failed to sell a sufficient number of newspapers," he was refused further newspapers.

Yet in none of these cases were these circumstances held to indicate an employee relationship.

Exercise of the right to discontinue dealing with a particular retail vendor was held not to be indicative of employer-employee status in *Matter of Houston Chronicle Publishing Company and Houston Newsboys Union, Local 456*, 28 N. L. R. B. 1043.

of them admitted that the most that had been told them was the hours they might expect to receive the various editions. Typical of this line of testimony is that of Joe Bryant, a portion of whose testimony was quoted and relied upon by the Board in its findings, as follows: "Bryant . . . admitted that he was not his own 'boss,' because he could not 'open . . . and close' whenever he wished and had 'to work specified hours.'" [R. 98, 99.] However, in the same examination, he testified that nobody ever specified the hours, but that had been "his understanding," and that "there was two or three of the Examiner told me the hours, and Joe Woods of the Herald told me what the hours were." [R. 928, 929.] On cross-examination he was asked the direct question ". . . isn't it a fact that what they told you was what time the editions came out, what time they hit the streets," to which he answered "That is right." [R. 929.]

Typical of the vendors' independence in this respect was the colloquy between the Circulation Manager and Schwartz, a member of the Union "Constitutional Committee." Schwartz phoned about 1:00 P. M. one day, to ask why the vendor was selling on his corner. Mr. Harrison testified:

> "Mr. Schwartz phoned about 1:00 o'clock or a little thereafter to know why someone was on his corner. I told him because he wasn't on the corner, that a surprisingly large story, the outbreak of war, had occurred and that his corner was without representation and we sent someone down there to cover it, and I asked him why he wasn't there. 'Well,' he said, 'I go to work at 1:00 o'clock.'
>
> "And I said 'War has broken out.'
>
> "'Well,' he said, 'war or no war, 1:00 o'clock is the time that I go to work.'" [R. 566.]

At the most, the testimony relied upon by the Board could only establish that the named vendors so testifying "were required" to be at their posts and there is no support for a finding of a "general" practice in this respect in view of the unanimous testimony of the supervisory employees of Respondent, that no instructions were given in this respect. [R. 566, 567, 601, 638, 639, 645, 646, 647, 648, 978.]

As stated by Branch Manager Brewster, "There is no set rule for them. They are on their own. It is up to them to be there if they want to make any compensation for themselves." [R. 645.]

An independent retailer or sales agent must normally expect to be diligent in making sales and receiving and caring for the merchandise delivered him, and it is only just that he use such diligence in the case of perishable merchandise. As noted hereinbefore, a requirement that a sales agent devote "all his time" to the sale of the company's product was held not to affect the independent status of the sales agent. (*Supra*, pp. 49-51.)

Moreover, cases dealing with the status of newsboys have held that such requirement is no indication of an employee status.[49]

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[49] In *Birmingham Post Co. v. Sturgeon*, 227 Ala. 162; 149 So. 74 (1933), the newsboy was required to be at his corner at a stated time to receive his papers. In *Bernat v. Star-Chronicle Pub. Co.*, ...Mo. App. .....; 84 S. W. (2d) 429 (1935), the newsboy was required to go to the railroad depot at a stated time to receive his papers. In *Balinski v. Press Pub. Co.*, 118 Pa. Sup. 89; 179 Atl. 897. (1935), the newsboy was required to report at his corner as soon after school as possible, and if he were habitually late he was refused further papers.

"The Newsboys Are Permitted by Each of the Companies to Return All Unsold Copies and Receive Credit for Them." [R. 91.]

As a generalization, the aforegoing finding is inaccurate in application to this Respondent. Full "returns" were accepted only in the downtown district, where adequate delivery schedules permitted the re-distribution of unsold copies. In the outlying districts, returns on base order were not accepted and it was up to the vendor to regulate his order to protect himself from loss. Returns of "extras" were accepted in all districts. (*Supra*, pp. 17, 18.)

As pointed out hereinbefore, it is a common practice of manufacturers to accept unsold merchandise for credit.[50]

In the same fashion, the cases dealing with the status of newsvendors hold that the privilege of returning unsold newspapers for credit is no indication of an employee relationship.[51]

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[50] *Sinnet v. Watkins*, 282 S. W. 769; *W. T. Rawleigh Medical Co. v. Holcomb*, 191 S. W. 215.

See also, authorities cited in Note, p. 50 hereof.

[51] See the following cases more particularly referred to in the Appendix: *New York Indemnity Co. v. Industrial Accident Comm.*, 213 Cal. 43; 1 Pac. (2d) 12 (1931); *Birmingham Post Co. v. Sturgeon*, 227 Ala. 162; 149 So. 74 (1933); *Creswell v. Charlotte News Pub. Co.*, 204 N. C. 380; 168 S. E. 408 (1933); *Balinski v. Press Pub. Co.*, 118 Pa. Sup. 89; 179 Atl. 897 (1935).

The Board has recognized that the return of unsold newspapers is not a factor indicative of an employer-employee relation. See *Matter of Houston Chronicle Publishing Company and Houston Newsboys Union, Local 456*, 28 N. L. R. B. 1043, 1045.

"The Companies Furnish Boxes, Racks, Change Aprons, and Placards Advertising Special Features Contained in the Newspapers. To Facilitate the Work of the Newsboy and to Increase Circulation . . . the District Managers Distribute Such Equipment and Advertising Material to the Newsboy With Instructions to Keep the Newspapers in the Boxes or Racks and to Display the Advertising Matter on Posts, Fire Plugs or Other Vantage Points." [R. 97, 98.]

There is no evidence whatever connecting this Respondent with the distribution of racks, and this part of the finding is, as to Respondent, not supported by substantial or any evidence.

This Respondent furnished at times small wooden boxes, painted green, with the name and price of Respondent's publication stenciled on the side. None were furnished in the downtown district. [R. 1640.] Papers were not placed in, but on top of the boxes, to keep them out of the dirt of the street. [R. 838.] Change aprons were short denim aprons containing three pockets for loose change. On occasions they were furnished to vendors who asked for them, though not always. [R. 813.] Some vendors asked for them and used them, others used their own change devices. [R. 813, 905.] In no instance was any charge made for boxes or aprons, and, of course, no vendor was compelled to use them. The vendors who used them stated that they were a convenience. [R. 813, 905.]

As to placards, the Circulation Manager of Respondent, in response to a question as to what instructions were given about the display of cards, testified:

". . . the practice of using these cards has continued since 1920, which has become a fixed habit

with the newsboys and members of the circulation department to take them out, distribute them and display them, and no instructions are necessary, or have been for years." [R. 1036.]

This seems obvious, in that any person of ordinary intelligence would not require instructions concerning the use of display cards. The vendors who used the same admitted that they increased the sale of the paper and, thus augmented their profits. [R. 768, 813, 839.] The boxes, aprons and placards bore the name of Respondent's publication and were actually advertising matter. The fact that such advertising material was furnished by Respondent to its retail outlets was more indicative of an independent sales relationship than that of employment. It is common knowledge, amply confirmed by the appearance of any dry goods store, drug store, automobile agency or other sales establishment, that manufacturers of merchandise prepare and furnish all types of advertising material and devices, attractive in design, to attract the attention of prospective purchasers, and, in many instances, utilitarian, so as to insure their use by the merchant.

The furnishing of advertising material is a common feature of the typical "sales agency." In one case, even the requirement that the sales agent pay half the cost of the advertising, was held not to affect the independence of the sales agent.[52]

The fact that the Chronicle Company gave newsvendors caps and aprons with the sign "Chronicle—3c" on them,[53]

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[52]Rosenbluth v. Hudson Motor Car Co., 265 Fed. 680, 681.

[53]See Appendix.

was apparently deemed of no importance, and was overlooked by the Board in its Decision and Order in the Matter of the Houston Chronicle Publishing Co.[54] In cases dealing with the status of newsboys, the furnishing of advertising paraphernalia is held to be no indication of employment.[55]

> *"For His Services in Redistributing Newspapers, the Checkman Receives a Small Salary From the Publisher. . . . In All Other Respects He Occupies a Position Similar to That of the Ordinary Newsboy."* [R. 90, 91.]

While the aforegoing finding is correct in its application to this Respondent, we have heretofore pointed out that a finding of employment for a specific purpose does not, as a matter of law, support a conclusion that the checkman is an employee of Respondent in the conduct of his own independent business. (*Supra*, pp. 52-54.)

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[54]28 N. L. R. B. 1043.

[55]In *Balinski v. Press Pub. Co.*, 118 Pa. Sup. 89; 179 Atl. 897 (1935) the newsboys were furnished with money bags bearing the name of the newspaper as well as "shoulder straps" with which to display the papers. This circumstance was held to be no indication of an employee relationship. In *Gall v. Detroit Journal Co.*, 191 Mich. 405; 158 N. W. 36 (1916) a newspaper carrier used his own automobile, but the newspaper's name was painted thereon. Despite this fact and the fact that the newspaper could terminate relations with him at any time, he was held to be an independent contractor.

In *Matter of Federal Ice & Cold Storage Co. and Produce Drivers and Employees Union, Local No. 630*, 18 N. L. R. B. 161, the company painted its name on ice trucks operated by certain drivers. In finding that these drivers were *not* employees, the Board said: "We are of the opinion that these services amount to no more than aid furnished by a distributor to independent dealers . . ."

"It Is Undenied That the District Managers Unilaterally Determine the Number of 'Extra' Papers, in Excess of the Established Order, Which the Newsboys Must Attempt to Sell. . . . . In Practice the Newsboys Cannot Determine the Size of Their Established Order Without the Cooperation of the District Manager." [R. 92.]

As we have heretofore pointed out ("Statement of Case Newsvendors Profit", pp. 16-19), the breaks in the news and the need for speedy printing and distribution of papers make impossible the advance taking of orders for "extras" on any edition. Respondent published six editions a day between the hours of 9:00 a. m. and 5:00 p. m. Thus in the space of eight hours, six complete editions are written, made up, printed and distributed throughout a tremendously large territory (*supra*, pp. 12-14), one edition every one hour and twenty minutes. Each vendor had a "base" or standing order, but experience demonstrated that the sale of newspapers varied tremendously, not only from day to day but from edition to edition, even in normal times.

During the entire day news stories "broke" locally and flooded in on the press wires from all over the world. These were incorporated in the various editions throughout the day. The event of an outstanding story, such as the outbreak of the war, might well double the circulation on the edition which first caught the story. It was an utter physical impossibility to contact 2,200 to 2,500 vendors located throughout the city in time to take specific orders for extras. [R. 566, 567, 1045, 1046, 1047.] Consequently, in order to make fully available to the individual vendor the chance to increase his profits, "extras" over and

above the base orders were carried out by or under the supervision of the district man. The individual vendor was contacted, if he was on his corner and if time permitted, and given an opportunity to order "extras." If he was not present or if time did not permit delay, a quantity of "extras" was dropped off with his regular bundle. *These "extras" were returnable for full credit in all districts.* Thus the vendor, without the outlay of any capital, was consigned merchandise for sale, all of which was returnable for full credit. In the downtown district, the vendor had thirteen opportunities per day to take additional papers, there being six regular deliveries and seven "recovers." In the outside districts there were not less than six regular deliveries, but, of course, fewer "recovers." Thus, through an amazingly efficient distribution system, the corner vendor was given every opportunity to take advantage of a fluctuating and uncertain public demand, to the increase of his profits, without a cent of capital invested in "extras." This important and profitable privilege becomes, in the language of the Board, a unilateral determination of the number of extras a "newsboy must attempt to sell." We respectfully submit that the finding is wholly unsupported by the evidence.

The Circulation Manager testified that one of the duties of a district man was ". . . to accept any regulation of order that may be tendered to him by those street vendors, increases or decreases . . ." [R. 548.] And such regulations were accepted and put into effect to the extent physical limitations of time and delivery facilities permitted. A reduction of a base order obviously could not be made by a district manager on the very base order he was then delivering, and it could not be done in the next edi-

tion unless the district man got back to his branch office before the deliveries on the next edition were made up. Moreover, the vendor could phone a change order to the branch or main office if he wished. [R. 573.] Furthermore, it must be remembered that the base order varied from edition to edition as well as from day to day. (*Supra*, pp. 16-19.) Despite the elaborate and remarkably efficient system devised to assist in the regulation of orders, the Board found it could not be done without the cooperation of the district man, and, relying on the testimony of Arthur Steuart, found that the privilege extended only ". . . to a reallocation of his order with respect to the number of papers of a given edition without changing the total number of papers in the established order." The Board reached this conclusion by entirely ignoring the testimony of this witness on cross-examination. Although maintaining he could not change his order, he admitted "The regular Order I can regulate to some extent" [R. 771] and further admitted that although his base order for the "Night Final" was one hundred papers, he could refuse the entire one-hundred. [R. 772.] Thus on a total base order of four hundred papers, he could regulate this daily order as much as 25% within a single day. Steuart's corner was in an "outside" district where returns on "base order" papers were not accepted. The Board also quoted the testimony of Sam Kahn [R. 93] as to his inability to regulate orders. The record shows that he was a "wholesaler", that the papers he was discussing were papers destined for delivery to "off spot" vendors, in which he had no interest whatsoever. The Board's finding, as aforesaid, is thus based on the testimony of two vendors. Moreover, as to "downtown" vendors, inability to lower orders (of which, there is no evidence whatever) would

have been a matter of no moment, as all papers delivered were returnable for full credit.

There is no testimony to support the finding as to the remaining vendors in the so-called "unit", but on the contrary, representatives of Respondent were unanimous in their testimony that vendors were permitted to regulate their base orders, up or down, and such changes were given effect as quickly as the limitation of time and delivery facilities permitted. The finding is, therefore, not supported by substantial evidence.

The finding does not, as a matter of law, support a conclusion of "employment." Many "sales agents" are required to purchase a minimum amount of goods and such requirement does not affect the independent status of such vendor. (*Supra*, pp. 49-51.)

> *"District Managers . . . Issue Detailed Directions as to the Specific Places Within the Newboy's Allotted Terirtory in Which to Engage in Selling Activities, Particularly With Reference to Standing in Street Traffic and Covering Business Establishments . . ."* [R. 96.]

The finding as to this Respondent is based on the testimony of *one* vendor that *one* district man told him to "always play that Safety Zone." [R. 909.] This selling advice, delivered to one newsboy, wholly fails to support a finding of "detailed directions."

"The Companies Dealt With Union Representatives With Respect to . . . Grievances. . . ." [R. 108.]

If this finding implies that this Respondent recognized and dealt with the Union as a representative of "employees", the finding is wholly unsupported by the evidence. Although the Union sought to negotiate, it was admitted by the organizer that the representatives of this Respondent ". . . made it very clear that they would not negotiate a contract—or consider negotiating a contract until it was decided whether newsboys were employees. . . ." [R. 672.]

If the words "negotiating . . . grievances" are intended to designate the practice known in the industry as "registering a beef", the evidence fails to support the finding. As is perfectly natural, vendors will object to the suppliers of their merchandise if they believe they have grounds for objection, and the newspaper business is no exception. The Circulation Manager of Respondent testified that his office had always been open to newsvendors wishing to make complaints, and that practice had continued up to the date of the hearing in this matter. Many individual newsboys had gone to his office and registered "beefs" and "complaints." [R. 550.] Thus Harry Relish "beefed" about being stuck with thirty-five papers [R. 730], and thus just prior to the time he hired his lawyer, J. Allen Frankel to protect his interest [R. 486], he complained about the refusal of Respondent to sell him newspapers. [R. 920.] This practice was well established long prior to the passage of the National Labor Relations Act,

and the formation of the alleged Union here involved. The fact that on occasions thereafter the Union organizer sometimes went with newsvendors to register "beefs" to Mr. Harrison or his assistants did not suddenly transmute those simple and every-day business occurrences into "negotiation of grievances", implying recognition of a "Union", nor admission of an employee status in the one making the "beef." Thus the Union organizer, Pat Comorre, was with his brother-in-law, Harry Powers, when he negotiated the purchase of the corner at 1 th and Spring from the daughter of the deceased owner. He saw the consideration of $150.00 pass and was with Powers when he presented the Bill of Sale prepared by Powers' attorney, Cary McWilliams, to the then occupant of the corner, one Nickerson, an employee of Williams, the deceased former owner [R. 1003], and took over the corner. Thereafter Comorre accompanied Powers (his brother-in-law) to the office of the Respondent when the district man expressed doubt as to the credit standing of the new owner and refused to sell papers on credit to him. During all the period after the organization of the Union, there was no doubt in the mind of the Union organizer that vendors were not recognized as employees by Respondent. We respectfully submit that the evidence does not support a finding that this Respondent dealt with Union represntatives with respect to grievances of "employees."

"The Record Also Contains Evidence With Respect to the Extent of the Company's Supervision Over the Conduct of the Newsboys While They Are Engaged in Selling Newspapers on the Street." [R. 103.]

In support of this finding, the Board cites two instances of so-called "Spotters" reports.

The record shows that this Respondent employed two checkers to supervise the activities of some sixty-eight district men. Their duties were described by the Circulation Manager as follows: "We have checkers who check the district men and do not check the newsboys but the district men . . ." [R. 575.] "These checkers are not supposed to discuss anything or talk with or give any orders whatever to newsboys . . ." [R. 576.] They check "The circulation, yes, the revision of the territory, *and whether or not the district manager appears to be neglecting a part of his territory or all of it or none of it.*" [R. 576.] "Well, for instance, he will report that the papers are laid on a certain corner, due at a certain time and they arrive later than that time. He may also report the time that the Daily News of a similar edition arrived at the same place. On a later edition, the last edition of the day, he will report the time that our papers reached some parts of the territory and the time that the Times and Examiner reached those places, with their first edition in the evening." [R. 577.]

It clearly appears that the purpose of these checkers was to observe the functioning of respondent's employees, the district men.

The same witness described the duties of district men as follows:

> "The district man's duty is to supervise a certain territory, to collect accounts for sale of papers from the newsvendors on the different corners that are in his territory, to accept any regulation of orders that may be tendered to him by those street vendors, increases or decreases, and to recover any vacancy that may occur as from time to time newsvendors drop out of that business." [R. 548.]

It will be noted that checkers particularly watch for the proper development of the territory by the district man. Accordingly, if a checker observes a prominent corner without "representation" of this Respondent's paper, he will advise the Circulation Manager. This report to the Circulation Manager is funneled down through the branch managers to the district man involved. [R. 578.] The two instances cited by the Board of alleged supervision of newsboys [R. 105] were instances of this practice. The district manager noted a corner uncovered and eventually a report was given to Louis K. France, the district man, that on a certain night neither newsboys or newspapers could be found on a specified corner. This corner was regularly operated by the newsboy Steuart. Naturally, the district man, believing the corner to be regularly occupied, asked Steuart whether or not the corner was vacant at the time mentioned. The witness Sam Kahn testified to the same effect that he was laid off by a district man because a checker had advised the district man that he was off the corner. Thus were the efforts of the Respondent to check the activities of its own employees, the district men, interpreted by the Board to be "supervision over the conduct of the newsboys." Refer-

ence was also made by the Board to the testimony of one district manager that part of his duties were to "go around and see that . . . the newsboys . . . are working." [R. 104.] What the district man actually said was: "Well, my duties consist of supplying the men papers on the corner and collecting from them in the evening and going around and seeing that they are at work, and covering the territory in general." [R. 681.]

As hereinabove pointed out, this district man's duty was to cover his territory. If corners became unoccupied, he attempted to secure vendors to cover them. As he delivered the late editions of the paper, he naturally observed whether part-time and regular vendors had shown up at the corners usually occupied by them. If they didn't take their corners, it is obvious that he had to make some disposition of the papers normally sold on that corner. As the Circulation Manager testified, "The occupation of a newsboy is a very fluctuating one. They come and go. They are here today and many of them are gone tomorrow." [R. 581.] Accordingly, when the district man testified that his duties consisted of "seeing that they are at work and covering the territory in general," he meant that and nothing more.

The above described testimony established only that the company employed checkers to observe the performance by the district men of their duties and to advise and assist the district men in securing and maintaining retail outlets in the district.

This evidence wholly fails to support a finding of "supervision over the conduct of the newsboys while they are engaged in selling newspapers on the street." It shows instead no interest whatever in the "conduct of newsboys",

but an interest only in the maintenance of a proper number of retail outlets in the district.

The finding of supervision by "checkers", based on the two instances cited by the Board, is wholly insufficient to support a finding of supervision of all the vendors in view of the direct testimony of the Circulation Manager as to the duties of the two checkers. No one in authority, acting on behalf of Respondent, is shown to have authorized or ratified any alleged supervision of newsboys by checkers, and any checking of vendors would be wholly unauthorized and directly contrary to the "checkers" instructions.

The evidence does not support the finding as a matter of law.[56]

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[56]In *New York Indemnity Co. v. Industrial Accident Comm.*, 213 Cal. 43; 1 Pac. (2d) 12, 14 (1931), the district manager testified that one of his duties "was to maintain a status of peace and harmony among the newsboys, and to so far supervise their daily conduct in the territory . . . as to promote the sale of the largest possible number of . . . newspapers . . ." In *Creswell v. Charlotte News Pub. Co.*, 204 N. C. 380; 168 S. E. 408, 409 (1933), the company's supervisor told the newsboy what the headlines were "and checked up the boys in order to ascertain if they were on the job or needed additional papers." In *Balinski v. Press Pub. Co.*, 118 Pa. Sup. 89; 179 Atl. 897, 898 (1935), the company's supervisor occasionally told the newsboys "how two hold the papers, and urged them to cry out the sale." The supervisor also made periodical inspection trips, and if he was of the opinion that a given newsboy was not making good, he informed the company's general manager, and if the latter was satisfied, the corner was taken away from the newsboy. A like result ensued if the newsboy sold the competing paper. In none of these cases were any of these circumstances held to be an indication of an employee relationship.

"*As a General Practice the Newsboys Sell More Than One Newspaper and Handle Magazines. In certain Instances, However, the Companies Have Objected to the Newsboys Handling Competing Publications.*" [R. 106.]

The Board found as a general practice the newsboys sold more than one newspaper. As we have shown hereinabove, the testimony disclosed that *every* newsvendor selling this Respondent's publication also sold one or more competing publications. (*Supra*, p. 19.) In support of the rest of the finding, the Board cites the testimony of *one* newsvendor that *one* district manager "warned" that newsvendor not to sell competing publications. And the same district man told the same newsvendor sometime prior to three years before the date of the hearing not to serve people who asked for the News, in the absence of the vendor who then regularly sold the News on the same corner. The newsvendor so "warned" was, however, at the time of the hearing, selling the Herald, News, Examiner, Times, Saturday Evening Post, Collier's, Liberty and Look. [R. 770.]

It is submitted that if the aforegoing finding is intended to infer that this Respondent objected to vendors selling its publication also selling other publications, it is not supported by the evidence.

The finding is insufficient, as a matter of law, to support the conclusion of "employment." The requirement that the "sales agent" sell the manufacturer's product exclusively is a common feature of such arrangements.[37]

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[37] See *W. T. Raleigh v. Trerice*, 195 N. W. 79; *Standard Fashion Co. v. Cummings*, 153 N. W. 814; *Rosenbluth v. Hudson Motor Co.*, 265 Fed. 680, and cases cited, *supra*, pp. 50, 51.

"By Arrangement . . . Between The Herald and The News, Substantially the Same Set of Newsboys Sell Both Newspapers . . . . The Publishers of These Newspapers Have Agreed as to the Manner in Which the Newsboys Shall Hold and Display the Respective Papers. In Accordance With That Agreement, District Managers of the News and the Herald Have Instructed the Newsboys to Hold the Herald . . . On the Inside and the News on the Outside in Order to Insure Display of the Masthead of Each Newspaper in Such Manner as to Be Visible to the Public Eye. The Agreement Also Provided That the Newsboys Specify Both Newspapers by Name in Their Cry." [R. 107.]

The Respondent's Circulation Manager testified that when vendors started to sell both the News and the Herald, no arrangements were made for the display by the vendors of the two papers, and that consequently friction arose between the District Managers of the rival organizations, and that a representative came to his office and suggested "that we should agree upon some fair method of display for both papers and it is understood that it would be well to have the News folded on the outside of the Herald . . . so this appeared to be a fair arrangement and we asked the newsboys in general to cooperate with us to that end." [R. 563.] Thereafter, complaints were received from the representatives of the Daily News that the vendors were not giving them outside display, and consequently Mr. Harrison ". . . notified the Branch Managers to instruct his District Managers to talk with the newsboys, telling them that that was not fair, not in accordance with the understanding, and to give the News their outside display." [R. 564.]

David Bell, Superintendent of Street Sales, testified in his inspections of his district, he never made any note of how newsvendors displayed papers, that it was a matter of no interest to him, and that he never attempted to regulate the manner in which vendors display newspapers. [R. 596.] District Man Woods testified he gave no instructions of any kind. [R. 600.] Branch Manager Brewster testified that in his district he tried to see "that the two papers get what we consider an even break." [R. 642.] Branch Manager Gratz gave no testimony in this connection, but one of his District Men, Plotkin, testified that no instructions were given.

In the Decision and Direction of Elections, the Board commented on his testimony as follows:

> "District Manager Plotkin, of the Herald, disclosed in his testimony that the newsboys have 'had' to display the newspaper prominently by holding it up in the air or, in the parlance of the trade, 'pitch that sheet'." [R. 108.]

What Plotkin actually testified, in answer to a question concerning what instructions were given him, was as follows:

> "Well, I don't know how to answer that. It has always been—a newsboy is generally—will do what we call 'get it in the air' and 'pitch that sheet', and he does what he has had to do for years, and he holds that paper out all the time and so by doing that he always held the News on the outside to give them a break; to give them a display, if that is what you mean.
>
> Q. Let us return to the instructions that Mr. Gratz gave you regarding this display. And will you please tell us what his instructions were? A. I can-

not recall whether he gave us any instructions as to how the boys were supposed to handle the papers or not. I can't recall. It just seems like it was the natural thing to do for any newsboy that knew how to handle a paper or hold papers in his hand." [R. 692.]

The aforegoing testimony developed nothing more than the fact that when vendors started to handle two competing newspapers, the District Man representing the respective publications tried to get what they considered proper "representation" for their own publications. In order to avoid friction, the Circulation Managers of the two papers agreed on what they would consider a fair display, if the papers were displayed at all, and the Circulation Manager of Respondent "asked the newsboys in general to cooperate with us to that end." This testimony, far from showing control over an employee, shows just the contrary. It shows the efforts made by two competing publications to secure proper "representation" from independent vendors selling both such competing publications. All of the testimony related to incidents occurring almost three years before the hearing in this matter, and there was no testimony of any discussion of display between the time the joint sale was undertaken by the vendors and the date of the hearing.

The testimony was insufficient as a matter of law to support a conclusion of "employment." As we have hereinabove pointed out, manufacturers may properly impose a condition on their vendors that such vendors handle the manufacturer's product exclusively (*supra*, pp. 50, 51). If the manufacturer waives such condition and agrees that his vendors may handle competing merchandise, he

may, without changing the independent status of the sales agent, insist that his product be given display at least equal to that given the competing product.

To summarize the testimony relied upon by the Board to sustain its conclusion of employment, it appears:

1. Allotment of "Spots."

Some vendors purchase profitable corners; one procured his corner "from a friend of his" who was working the corner [R. 1117]; some vendors, knowing of the existence of open spots, ask the district men to furnish them papers at such spots; some vendors take over the spots and others apply to the district men for open spots. "Open" spots in the downtown area were rarities. The Superintendent of street sales testified, that they were so rare he couldn't remember the last opening. [R. 589, 590.]

2. Temporary or Permanent Removal or Transfer.

(a) *Testimony Applying Generally to All Vendors.*

The only testimony applying generally to all newsvendors was that of District Manager Woods, that he had never removed anybody in his district for failing to appear on his spot [R. 599], and that of Albert W. Brewster, Branch Manager, that he had never removed a newsvendor for failing to appear. [R. 684.]

(b) *Specific Testimony.*

Five vendors testified to instances, involving themselves only, of temporary "layoffs", and one testified that he was permanently "laid off." The evidence showed in each instance a proper refusal for just cause to furnish papers. One vendor testified to being "transferred" to a better cor-

ner, after an altercation with the owner of the drug store on the corner at which the vendor sold papers. (*Supra*, p. 62.)

3. Hours.

(a) *Testimony Applying Generally to All Vendors.*

District Manager Woods testified that vendors ". . . came and went when they felt like it, and they quit when they felt like it . . . I never told anybody what time to show up, or what time to quit, as long as I have been around there . . ." (15 years). [R. 601.] Jake M. Gratz, Branch Manager, testified that he had no instructions from the Circulation Department regarding the hours during which newspapers were to be sold in his district. [R. 638, 639.] Albert W. Brewster, Branch Manager, testified: "They (vendors) are on their own. It is up to them to be there if they want to make any compensation for themselves." [R. 645.] Harry Plotkin, District Man, testified that he gave no instructions to newsvendors with reference "to what time they shall start selling papers." [R. 699.] Louis Kenneth France testified that he gave no instructions to wholesalers or full-time vendors concerning the hours of sale. [R. 713.]

(b) *Specific Testimony.*

Some individual vendors testified that they personally were told when to be on their corners. Vendor Bryant testified that he was told what times the editions would be delivered to his corner. Vendor Spampinato testified that Gordon Norton, "Dealer", "said it would be advisable for me to stay later, until about 8:00 o'clock, to catch late sales." He testified that he had been, at the time of the hearing, June, 1940, selling papers on his corner for six

years; that the aforegoing was the only conversation he had with any representative of Respondent concerning hours; that the conversation took place at the time of the raise in price of the paper [November 1, 1937—R. 1012] which was over three years after he started selling on the corner.

Vendor Barrett testified that another newsvendor "told me to show up at 9:30, and I come at 9:30 and quit at 6:20." [R. 849.] Vendor Schwartz did not testify on this subject, nor did Vendor Roth; Spillers, a "wholesaler," testified that the District Man told him "he would like for me to stay there until 8:00 o'clock at night and I would go on at 10:00 in the morning . . . ." [R. 881.] Vendor Kahn testified he was told when he first took the corner to come "at the time the Green Flashes arrive . . . . at 9:45 or 10:00, or probably a little later . . . and to stay there until 8:00 o'clock . . . ." Kahn was also a "wholesaler." Schullman, a wholesaler, did not testify as to "hours." Gallagher, who at the time of the hearing had owned his corner for twenty years, testified to no instructions, but stated he was on his corner "9:30 to 7:00. I generally knock off about 6:00 o'clock and by the time I fool around and check up and put stuff away it is 7:00 o'clock before I get away." [R. 942.] He "checked in", *i. e.* paid for his papers every morning at 10:00 a. m. [R. 943.] Vendor Newman testified that he came and went as he pleased. [R. 946.] Vendor Georgon did not testify as to "hours"; nor did Faber. Relish testified he was told to be on his corner from 9:30 to 6:30. [R. 728.] Gish did not testify as to "hours." Stewart testified "My hours are from ten o'clock in the morning until nine o'clock in the evening, but I have a man come down at seven o'clock and relieve me and work

until nine." [R. 747.] Steuart was also a "wholesaler." [R. 767.] Kadesh, a wholesaler, testified "Why I come there at 9:30 and stay until 8:00 o'clock." [R. 793.] Vendors Alley, Apice, Nickerson and Comorre did not testify as to hours. Of all the vendors testifying, only five—Spillers, Kahn, Steuart, Kadesh and Relish—testified to direct instructions as to hours.

4. "Returns."

Returns on all papers were accepted in the downtown district. Returns of "base order" papers not accepted in outlying districts but returns of all "extras" accepted.

5. "Racks, Boxes, Change Aprons, Placards."

No racks furnished; no boxes furnished in downtown district; boxes given, upon request and if available, in outside districts; change aprons given, upon request and if available. No requirement that boxes or change aprons be used. Placards used for twenty years prior to date of hearing. No instructions needed for their use.

6. "Determination of Orders."

(a) Full Returns Were Given in Downtown District and "Extras" Were Made Available Thirteen Times Per Day.

(b) *Outside Districts.*

General Testimony—The Testimony applying to news vendors generally was that district men were instructed that their duties were to accept changes in orders, increases or decreases. In outside districts, the base order could be raised or lowered at vendor's will, and changes were put through as speedily as the mechanics of the

change permitted. "Extras" were made available on regular deliveries and were all returnable.

Specific Testimony—Two vendors in these districts, Steuart and Kahn, testified they could not regulate their base orders.

7. "Specific Places."

(a) *General Testimony.*

District man Woods stated he gave no instructions whatever. [R. 600.] No other representative of respondent testified concerning any instructions.

(b) *Specific Testimony.*

Vendor Kahn testified that Plotkin told him to "always play that safety zone."

8. "General Supervision."

(a) *General Testimony.*

The Circulation Manager stated the two "checkers" supervised the work of the district men and had no duties whatever with respect to newsvendors.

(b) *Specific Testimony.*

One vendor, Steuart, testified the district man had shown him a report made concerning the district man's district, of "no papers—no boy" on the corner Steuart occupied. Vendor Kahn testified to the same effect.

The above recapitulation demonstrates the tenuous and unsubstantial nature of the evidence relied upon by the

Board. There was no general testimony, affecting all vendors, of any requirements as to hours, "allocation" of spots, "removals" and "lay offs", furnishing of change aprons and boxes, or issuance of detailed selling instructions, nor was there any general testimony to the effect that vendors could not regulate orders, up or down at will. Resolving all conflicts in favor of the Board's finding, it cannot extend beyond the very few vendors testifying to the alleged instances of "control." Certainly, an inference that such alleged instances of control prevailed generally cannot exist in the face of unequivocal testimony to the contrary.

> "The Board should not discard the positive credible testimony of witnesses in favor of an inference drawn from tenuous circumstances that at best could have supported only an anemic suspicion. Such an inference does not meet the test of substantial evidence."[38]

[38] *National Labor Relations Board v. Sheboygan Chair Co.* (C. C. A. 7), 125 Fed. (2d) 436, 439.

II.

THERE IS NO SUBSTANTIAL EVIDENCE SUPPORTING THE CONCLUSION OF THE BOARD THAT THE CLAIMED BARGAINING UNIT FOR SO-CALLED EMPLOYEES OF RESPONDENT WAS AN APPROPRIATE UNIT.

1. The Act Requires That the Designated Unit Be Appropriate.

The unfair labor practice charged against petitioner herein was the failure to bargain collectively with the representative of the newsboys. The representative under such Act must be, however, designated or selected by a "majority of the employees in a unit appropriate for such purposes." (Sec. 9(a).) Thus in order to support the charge of unfair labor practice, the Board must first determine that there has been a failure to bargain with a "representative" and moreover, the Board must, in order to find that the representative has been lawfully designated or selected, determine whether or not the so-called unit is "appropriate."

Pittsburgh Plate Glass Co. v. N. L. R. B., 313 U. S. 146, 152, 85 L. Ed. 1251, 1258.

2. The Bargaining Unit Designated by the Board Was Not an Appropriate Unit.

The Board concluded, as a matter of law, that the appropriate unit as to this petitioner was "all full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys" [R. 119.]

By its Fourth amendment to decision and direction of election, the Board amended the second paragraph of Sec-

tion VI of the decision and substituted therefor, as a separate paragraph, the following:

> "Thus defined with respect to the Los Angeles Evening Herald and Express, the term 'full-time' newsboy means a newsboy who regularly sells to the public five or more editions a day five or more days a week; the term 'part-time' newsboy means a newsboy who sells to the public less than five editions a day or who sells to the public all or any of the daily editions published by the Los Angeles Evening Herald and Express less than five days a week." [R. 141, 142.]

The Decision and Order of March 30, 1942, here under review, found the Bargaining Unit to be the same as that set forth in the Decision and Direction of Elections of January 9, 1941. [R. 345.] The Decision and Order of March 30, 1942, did not, however, define the terms "full-time" or "part-time" newsboys, but it must be assumed that the definition thereof is the same as that contained in the Board's Fourth Amendment to Decision and Direction of Election. [R. 141, 142.]

The Board made no findings of fact in its Order and Decision of March 30, 1942 (the "Complaint" case) supporting its conclusion of law that the alleged unit was appropriate. [R. 345.] However, in its decision and Direction of Elections of January 9, 1941 (the "Representation" case), it stated

> "The Union desires to exclude bootjackers, temporary, and part-time newsboys since they consist largely of schoolboys who do not depend upon the vending of newspapers for a livelihood and because of the irregularity of their employment.

"Each of the Companies contends that the unit sought by the Union in its respective case is inappropriate because newsboys, having interests similar to those whom the Union seeks to represent as exclusive bargaining representatives, are excluded. The Union desires to exclude bootjackers, temporary, and part-time newsboys since they consist largely of schoolboys who do not depend upon the vending of newspapers for a livelihood and because of the irregularity of their employment. Similarly the Union does not desire to include in the unit the suburban newsboys, other than the Times newsboys in Glendale, California, because organization has not as yet been extended to the suburban group generally. Since those whom the Union desires to be included in the unit are, in general, mature individuals who daily rely upon their earnings from the street vending of newspapers as their source of support, since the Union is the only labor organization existing among the newsboys, and because union organization has not at present extended to suburban newsboys other than the Times newsboys in Glendale, California, we find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining: All full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual and part-time newsboys."

However, the definition of the unit does not and cannot accomplish its supposed purposes. The aforegoing finding was apparently based upon the testimony of Patrick Comorre, the Union organizer, who described full-time newsboys and checkmen as follows:

"Well, as I find them, most of the check men, practically in all cases with the exception of a few

there, full grown men, or young men 21 or 22 years old, and in most cases older men, and that probably have families and lots of them—most of them do have families—and men that depend on that work for their livelihood. And that goes for the full time men also. In fact, full time men are mostly all with lesser exception than the check men. That is with—they are more so that type of person than of the check men. We have a few check men, I would say, that—on afternoon spots are good sized boys, probably in high school, that gets out of school early and comes out and takes care of the main spots; that is, the wholesale job, as they call it, on that intersection or where he may be." [R. 859, 860.]

The testimony indicates that most of the checkmen are over the age of 21 and are not schoolboys, but some of them are under that age and are schoolboys, "and that goes for the full time men also." Accordingly, it seems clear that the unit does not exclude "schoolboys who do not depend upon the vending of newspapers for a livelihood", nor does it necessarily include all "mature individuals who daily rely upon their earnings from the street vending of newspapers. . . ." There is no age requirement for admission to the Union. A vendor whose corner did not support a sale of the first two morning issues and who thus sold only four editions of the paper, would not be a member of the unit, no matter how dependent he was on the earnings from his newsvending for his support, nor what his age. Nor would he be a member of the unit if he sold six editions a day four days a week. The definition does not require that a member of a unit sell every day the paper is published, as it is published six days a week, yet a vendor selling five days a week would come within the definition.

The further finding that "organization has not been extended to suburban newsboys" selling Respondent's publication is apparently not based upon any intrinsic distinction between suburban newsvendors and city newsvendors. It is based wholly on the desire of the Union that the unit area be confined to the area the Union has succeeded in organizing.

Section 8, Subd. (b) of the Act provides that "the Board shall decide in each case whether . . . the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof." A unit which is none of these but is based solely on an arbitrary group that the Union has succeeded in organizing is not within the statute. The unit, not being "appropriate" within the meaning of the statute, the Union was not lawfully designated or selected and no unfair labor practice can be predicated on a refusal to bargain with such Union.

Pittsburgh Plate Glass Co. v. N. L. R. B., supra.

It is respectfully submitted that the decree of the Circuit Court of Appeals [R. 1852, 1853] should be affirmed.

H. S. Mac Kay, Jr.,
Edward L. Compton,
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APPENDIX.

Excerpts From Report of Hearing in Case Entitled Eustace v. New York Indemnity Company, Los Angeles Evening Herald et al., Los Angeles Claim No. 10698, Before the Department of Industrial Relations, Division of Industrial Accidents and Safety, January 9, 1929, and February 4, 1929. (On Appeal, Entitled New York Indemnity v. I. A. C. and Reported at 213 Cal. 43, 1 Pac. (2d) 12.)

Testimony of Claude Eustace, the claimant:

"Q. Mr. Eustace, will you state please just what the circumstances were under which you became identified, if you did become identified, with Mr. A. L. Smith sometime in the latter part of October, 1928? A. I went up to his district headquarters at Washington and Main and asked him if he had any open corner to go to work.

Q. Do you recall about when that conversation took place? A. No, sir.

Q. What did Mr. Smith say to you at that time? A. He told me that he did not have a very good corner open but I could take the northwest corner of Washington & Main until school was out, and then he would change me over to the northeast corner from the time school was out until 7 o'clock at night.

Q. Had you ever been identified with Mr. Smith previous to that time? A. Yes, sir.

Q. During what period? A. It was either in 1926 or 1927.

Q. When did you first start selling papers after this last conversation that you had with Mr. Smith on the

corner of Washington and Main? A. You mean start selling after the last time I went up to him and asked him for a job?

Q. Yes. A. I went to work for him that same day.

Q. Did you have any definite arrangements for the number of papers that you were to get? A. Yes, sir.

Q. What were those arrangements? A. The arrangement was, I was to take out 130 Heralds a day, and take out the Records but they were returned, and I had to pay for these 130 Heralds a day.

The Referee:

Q. Did Al Smith tell you you couldn't sell on the other corners? A. Yes, sir.

Q. How did he regulate that? A. Why by contract with another boy on the other corner.

Q. I don't think you mean that. Did he regulate it by refusing to sell you papers? A. If I sold on the other boy's corner, yes.

Q. He would refuse to sell you papers? A. Yes.

Q. Mr. Eustace, before you started to work did anyone designate to you where you should sell papers? A. Al Smith did.

Q. In what territory did he designate you were to sell these papers in? A. From 9:30 in the morning to school was out I was supposed to sell on the northwest corner of Washington and Main, and after school until 7 o'clock at night I was to sell on the northeast corner of Washington and Main.

The Referee:

Q. Here is another thing, the paper—does it prescribe the quota that your corner must sell? A. Yes, sir.

Q. If you don't sell that quota what happens and how do you do it? A. They take the papers away from you.

Q. How do you know that? A. Because I have had orders to do it myself when I was district man.

Q. Have you ever seen it done recently? A. I seen it done in July, 1928.

Q. Do you know the Herald is doing that right along, to boys that don't produce? A. Yes, sir.

Q. How do you know it? A. I seen it done twice, once in June and once in the latter part of July, 1928.

Q. They refused to sell to certain boy and put another boy on that corner? A. Yes, sir.

Q. And sold to him? A. Yes, sir.

The Referee:

Q. Who prescribed each day the number of papers that you were to receive? A. Al Smith, the district man at Washington and Main.

Q. Did you know before the papers were sold to you how many there was going to be in a bundle? A. Yes, sir.

Q. How do you know that? A. Because they are marked when they come down in a bundle, and the bundle is to be the same every day.

Q. If you want to take less how do you do? A. I would just lose the corner.

Q. If you want to take more, what would you do? A. I could tell Al Smith and leave increase for me."

Testimony of Fred E. Neal, Assistant Circulation Manager, Evening Herald:

"A. I handle the streets and everything else. I investigate all day long.

Q. Do you go on the various corners and check up on your district managers? A. Every day of my life except one or two days I am stuck in the office and cannot get out.

Q. At that time do you see who is selling papers on the corner? A. Absolutely.

Q. Do you make a check on the boys that are there? A. No, I don't call and personally check there on it.

Q. You mean if a boy— A. If I don't see him I tell the district man 'you better cover that corner.'

Q. Then what does he do? A. He covers it, tries to get a school boy.

Q. Do you supervise the boys personally? A. No.

Q. That's done by the district manager, isn't it? A. Yes.

Q. They have these different territories on the corner? A. The district man has a definite territory."

Excerpts From the Record and the Opinion in the Matter of Houston Chronicle Publishing Company and Houston Newsboys Union, Local 456, Case No. R-2024, Heard Before the Trial Examiner on August 26, 27, 28 and 29, 1940, at Houston, Texas. (28 N. L. R. B. 1043.)

(References, thus [R. .....], are to the record in the above case.)

Newsboys report to work at 9:00 a. m. [R. 373.]

"Checks in" or settles up at 7:00 p. m. [R. 374.]

Newsboys are engaged in selling papers on the downtown streets of Houston from 9:00 a. m. to 7:00 p. m. [R. 373.]

The witness McDessy, the president of the Union, testified: "The district man tells you what time to get down and gives you your papers, and if you are not there somebody is going to be there to take your place." [R. 68-69.]

The witness Sexon testified that he was told when to report for work, when extras were coming out [R. 245] and how long to stay on the corner, and was reprimanded when he failed to report for papers; that Golden (City Street Circulator) told practically all the newsboys one day that he would "fire" them all if they did not stay on their corners and get another bunch to put in their places. [R. 271.]

The Chronicle Company gave newsboys caps and aprons with the sign "Chronicle 36" on them [R. 326]; they did not charge for them—merely gave them. [R. 328.]

The witness Sexon, an officer of the petitioning union, testified that a newsboy named Hibbler had been "fired." [R. 525.]

The witness Bobbie Romel claimed to have been "fired" [R. 387]; that Mr. Golden removed him because he was playing the horses a little. [R. 388.]

The witness Sexon testified that the price of the Chronicle was changed to 3¢, and that he was "fired" because he did not holler "Chronicle is now 3¢." [R. 311.]

The witness Charles Sanders testified that he was "fired" by Golden. [R. 690.]

The witness Benny Gomez testified that "he (Golden) 'fired' me twice." [R. 102.]

The witness McDessy testified he had seen Golden "fire" a man and get a policeman to take the papers away from the man; that possibly the man was drunk. [R. 83.]

The witness Sexon testified that Golden (City Street Circulator) designated certain corners and places at which newsboys should sell, and that Golden removed him from the Humble Building corner to the Gulf Building, but on cross-examination admitted that the Gulf Building was in the heart of Houston and a better corner than the Humble corner. [R. 329-330.]

McDessy testified that he had seen Chronicle men checking other men selling Houston Chronicles. [R. 82.]

The witness Sexon testified as to the price news vendors were required to sell the papers for. He testified that it was an unwritten law that newsboys did not sell the papers under the regular price. [R. 87-88.]

The witness Sexon further testified that Golden took pictures of newsboys on corners as evidence of whether

they were selling papers [R. 232], and further testified that Golden reprimanded him for leaving corners. [R. 300-301.]

Unit.

Board's Exhibit 18 shows the petitioning union claimed the proper unit to be "all employees engaged in selling newspapers on regularly established street corners and office buildings in the downtown area of Houston.

28 *N. L. R. B.* 1043, 1045:

> "The Company keeps a board in its offices that contains 43 hooks, one for each downtown selling station. There are four checks on each hook, representing the four daily editions of the Houston Chronicle. The newsboys come to the Company's offices every morning and remove the checks from the hooks corresponding to their downtown location. The newsboys themselves are alone responsible for the location they select to sell newspapers. . . ."
>
> "Several newsboys testified that they have repeatedly complained to the Company about other newsboys selling papers on their corners, but that the Company has consistently refused to refrain from selling papers to newsboys other than those who have regular stations in the downtown area.[1] Although several newsboys testified that they had been 'fired' by Golden, it appears that in fact all that had happened is that their papers were given to other newsboys when they had gotten into trouble and had been unable to sell them."

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[1] "These stations are 'regular' only in the sense that they have been acquired by the newsboys themselves, who appear there regularly to sell the papers."

Decisions of State Courts Holding That Newsboys Are Not Employees, With Summary of Facts in Each Case Showing Its Application to the Facts Here Presented for Review.

In *New York Indemnity Co. v. Industrial Accident Comm.*, 213 Cal. 43, 1 Pac. (2d) 12 (1931), newspapers were delivered to a newsboy daily by a district manager acting for two Los Angeles newspaper publishers. In the case of one newspaper ("Herald"), the newsboy paid 2¢ per copy, either at the time the papers were delivered to him or at the close of sales for the day. Unsold copies of such paper were not returnable. In the case of the other newspaper ("Record") sold by the boy, credit was given him for returned copies. In the case of both newspapers the newsboy's profits consisted in the difference between the price he paid and the price at which the publishers permitted him to resell. The newsboy was allotted a specified corner or street location by the district manager (an employee of the publishers), who instructed him "not to intrude upon or interfere with the corner or place allotted to another. Each . . . newsboy was expected and in fact required to be active and vigilant in making sales of a prescribed minimum number of each of said newspapers . . . in short, to be a 'hustler' in making sales. Otherwise his allotted space or corner would be given to another newsboy and he would be refused further copies by the district manager. The latter testified that one of his duties as such district manager . . . was to maintain a status of peace and harmony among the newsboys, and to so far supervise their daily conduct in the territory . . . as to promote the sale of the largest possible number of copies of each of said newspapers . . ." The California Workmen's Compensation Act at

the time of this decision[2] defined "employee" as "every person in the service of an employer as defined in section seven hereof under any appointment or contract of hire or apprenticeship, express or implied, oral or written." (Sec. 7 referred to defined "employer" as ". . . every person . . . and corporation . . . who has any person in service under any appointment or contract of hire, or apprenticeship, express or implied, oral or written . . .")

It was held that the newsboy was *not an employee* entitled to the benefits of this statute. The court stated (213 Cal. at 48, 49) that the "essential inquiry" was "whether the nature and degree of control exercised by the publishers . . . through their district manager, was such as would suffice to justify the finding of the Commission to the effect that newsboys . . . stood in relation of employees of the publishers . . . ," and concluded the "control which the publishers . . . undertook to exercise . . . would not as a matter of law be sufficient to constitute such newsboys . . . employees . . . We are satisfied that the finding of the Commission . . . amounted to an erroneous legal conclusion . . . ."

This case was relied upon and approved in *State Compensation Ins. Fund v. Industrial Accident Comm.*, 216 Cal. 351, 14 Pac. (2d) 306 (1932), dealing with the status of a newspaper "routeman" and route carrier, and was followed in *Associated Indemnity Corp. v. Industrial Accident Comm.*, 115 Cal. App. 754, 2 Pac. (2d) 51

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[2]This case was decided June 27, 1931. Effective August 14, 1931, an amendment to this statute became effective excluding from its operation "any person engaged in vending . . . any newspaper . . . where the title to such newspaper . . . has passed to the person so engaged . . ."

(1931), and *Hartford Acc. & Ind. Co. v. Industrial Accident Comm.*, 123 Cal. App. 151, 10 Pac. (2d) 1035 (1932), dealing with the status of newsboys.

In *Birmingham Post Co. v. Sturgeon*, 227 Ala. 162, 149 So. 74 (1933), the newsboy was assigned a certain "corner" by the company. He was required to call at the company's office at a certain hour each day to obtain a supply of papers. Subsequent editions were delivered to him at his corner at stated hours and he was required to be there to receive the same. He was not permitted to sell any papers except those published by defendant "except after checking in at defendant's office on Saturday nights." After reaching his corner he was permitted to sell papers *only* along a prescribed route, or to sell at not less than the newspaper's published retail price. He could turn in unsold copies, but was required to account daily for all copies received less those turned in. If he failed to call for his first assignment of papers, another newsboy was assigned to his corner. The company had the right to dispense with his services "at any time they became unsatisfactory for any reason." The Alabama Workmen's Compensation Law defined "employer" as "every person . . . . who employs another to perform a service for hire and to whom the 'employer' directly pays wages," and provided also that, "The terms 'employee' and 'workman' are used interchangeably . . . ." It was pointed out (149 So. at 77), that under this statute the test of employment was whether defendant had the power to control the means and agencies by which the work was

done It was held that the newsboy was *not an employee* under this statute. Although the court says (149 So. at 80):

> "We have recognized that our statute is to be liberally construed to the end that its wise and humane purpose may be advanced . . ."

it concludes (149 So. at 79):

> "Under the facts as here presented, we think it clearly appears there was neither sufficient control exercised, or right to do so, reserved, as to support the relation of employer and employee."

In *Creswell v. Charlotte News Pub. Co.*, 204 N. C. 380, 168 S. E. 408 (1933), the newsboy was engaged by the company's supervisor, who turned over to him daily a certain number of newspapers on credit. Subsequent settlement was at the rate of 3c per copy, the newsboy retaining as his own the selling price above that rate. All unsold papers were returned at the end of the day. The newsboy was assigned a regular territory. The company's supervisor told the newsboy what the headlines were "and checked up the boys in order to ascertain if they were on the job or needed additional papers. If they did not stay on the beat assigned or were not active in the effort to sell papers, they lost their jobs." The newsboy solicited whom he chose "and otherwise conducted the selling according to his own notions and methods." The Workmen's Compensation Act of North Carolina defined "employee" to mean "every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written." It was held

that the newsboy was *not an "employee"* entitled to the benefits of this Act. The court said (168 S. E. at 409):

> "While there was certain supervision exercised by the agent of defendant with respect to the territory assigned, *the control over the methods of selling was too uncertain, indefinite, and remote to constitute the relationship of employer and employee.*"

In *Bernat v. Star-Chronicle Pub. Co.*, 84 S. W. (2d) 429 (1935), the newsboy agreed to pay for the papers of two newspaper publishing companies monthly at a wholesale rate and to sell only at the companies' established retail rate. His list of newspaper subscribers belonged to the company. The company reserved the right to sell to as many newsdealers in the locality as it desired. If the newsboy failed to conduct his activities "to the entire satisfaction of the companies" then the latter could discontinue supplying him with papers. The newsboy was required to confine his activities to the town in which he lived, and was permitted to return unsold papers for credit. He was supposed to go to the railroad depot each day for the purpose of receiving his bundles of papers. The Missouri Workmen's Compensation Law defined "employee" as "every person in the service of any employer . . . under any contract of hire, express or implied, oral or written, or under any appointment or election." It was held that the newsboy was *not an employe* entitled to the benefits of this statute, the court saying (84 S. W. (2d) at 433):

> "Undoubtedly the form of definition employed indicates a legislative intent that . . . the term 'employee' shall be given a broad meaning . . .
>
> . . . . . .

"Undoubtedly a certain limited right of supervision was exercised or at least reserved to the companies so as to enable them to see to it that the final result contemplated by the arrangement was accomplished, but not such right of supervision over the methods, details, and particulars of the work as to give rise to the relationship of employer and employee . . .

. . . . . .

". . . Furthermore, it is significant that . . . the two publications being sold by claimant at the time of his injury were strictly competitive and not complementary, which is an added reason for finding that his actual status was inconsistent with that of an employee of the two publishing companies."

In *Balinski v. Press Pub. Co.,* 118 Pa. Sup. 89, 179 Atl. 897 (1935), the company's district manager was instructed "to place" a newsboy on street corners in his district, the boy to have "more or less exclusive rights" to sell the paper in the vicinity of his corner. The company furnished the newsboys with money bags bearing the name of the newspaper as well as "shoulder straps" with which to display the papers. The district manager furnished the newsboys copies of the papers to be sold and each evening accepted back the unsold papers. He also occasionally offered a price to the newsboy who would sell the most newspapers. The newsboys were required to report at their assigned corners as soon after school as possible. If a newsboy was habitually late at his corner for his first delivery of papers, "the corner would be taken away and further papers refused." Each newsboy was asked not to sell on corners assigned to other newsboys, or in front of drug stores selling the newspaper. If he continued to do so his corner was taken away and

further papers refused. The same result followed if the newsboy sold papers in excess of the price fixed, or sold the competing newspaper or "failed to sell a sufficient number of newspapers." Occasionally the company's supervisor told the newsboy "how to hold the papers, and urged them to cry out the sale . . ." The supervisor also made periodical rounds of inspection and if he was of the opinion that the newsboy was not making good, he informed the district manager, and if the latter was satisfied, the corner was taken away and further papers refused. Each newsboy was supposed to wait each evening until the district manager had come around and settled with him. It was held that the newsboy was *not an employee* under the Pennsylvania Workmen's Compensation Act. The court said (179 Atl. at 899):

> "The evidence establishes that Shanahan (the district manager) neither independently, nor as an agent of the appellant (newspaper), exercised such authority or control over the decedent (newsboy), or the newsboys generally, as to establish the relationship of master and servant, thus constituting the decedent an employee of the appellant."

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IN THE

Supreme Court of the United States

October Term, 1943

No. 339

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

THE TIMES-MIRROR COMPANY,

Respondent.

BRIEF OF RESPONDENT THE TIMES-MIRROR COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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IN THE

Supreme Court of the United States

No. 339

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

THE TIMES-MIRROR COMPANY,

Respondent.

BRIEF OF RESPONDENT THE TIMES-MIRROR COMPANY[1] IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

POINT I.

There Is No Conflict of Federal Court Decision in Interpretation of the Term "Employee" as Used in the National Labor Relations Act and Other Cognate Social Legislation.[1]

A. In the Absence in the Act of Comprehensive Definition of the Term "Employee", Courts Will Apply the Ordinary and Conventional Meaning Ascribed at Common Law and by the Courts to Cognate Social Legislation.

(1) Except as Congress has written into the Act different standards, the federal rules protecting the federal

[1]The Times-Mirror Company is the corporate name of organization publishing the Los Angeles Times.

rights created by the Act are fashioned from the common law.

Bailey, Adm'x v. Central Vermont Railway, Inc., (May 24, 1943) ..... U. S. ....., 63 S. Ct. 1062:

"The rights which the Act [Federal Employers' Liability] creates are federal rights protected by federal rather than local rules of law (citing authorities). And those federal rules have been largely fashioned from the common law (citing authorities) except as Congress has written into the Act different standards (citing authorities)." (63 S. Ct. 1063-1064.)

(2) The legislative authority uses words in their ordinary sense and with the meaning commonly attributed to them.

Keppner v. United States, 195 U. S. 100, at 124:

"It is a well-settled rule of construction that language used in a statute which has a *settled and well-known meaning, sanctioned by judicial decision*, is presumed to be used in that sense by the legislative body."

United States v. First National Bank, 234 U. S. 245, at 258:

"That this *natural and usual signification* of plain terms is to be adopted as the legislative meaning in the absence of clear showing that something else was meant, is an *elementary* rule of construction frequently recognized and followed in this court."

United States v. Merriam, 263 U. S. 179, at 187:

"The word 'bequest' having the *judicially settled meaning* which we have stated, we must presume it was used in that sense by Congress."

Lynch v. Alworth-Stephens Co., 267 U. S. 364, at 370:

"And the *plain, obvious and rational meaning* of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover."

Von Weise v. Commissioner of Internal Revenue (8 C. C. A.) 69 F. (2d) 439, at 441, certiorari denied 292 U. S. 655:

"One of the cardinal rules for construing statutes is that the words used are to be given their *common, ordinary meaning* in the absence of indication in the statute or in the surrounding circumstances to the contrary; but, if a definition of the word is given in the statute, that definition is controlling."

McDonald v. United States (8 C. C. A.), 89 F. (2d) 128, at 133, certiorari denied 301 U. S. 697:

"* * * it is well-settled that, when a statute uses words whose meaning under judicial decisions has become *well-known and well-settled, it will be presumed* that the Legislature used such words in the sense justified by long judicial sanction."

Sanborn v. Commissioner (8 C. C. A.), 88 F. (2d) 134, at 137, certiorari denied 301 U. S. 700:

"* * * 'the *plain, obvious and rational meaning* of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover,' has received the approval of the Supreme Court, and is now well settled."

Hearst Publications, Inc., et al. v. National Labor Relations Board, 136 F. (2d) 608, at 612 [R. p. 1848]:

"Such a result is in accord with the basic theory of statutory interpretation that the legislature is presumed to use words in their ordinary sense unless that sense is contradicted by the context of a statute."

(3) This presumption must be indulged by the courts.

Levy's Lessee v. M'Cartee, 6 Peters (31 U. S.) 102, 110:

"The legislature *must be presumed* to use words in their *known and ordinary* signification unless that sense be repelled by the context."

Maillard v. Lawrence, 16 How. (57 U. S.) 251:

"The *popular or received import* of words furnishes the general rule for the interpretation of public laws as well as of private and social transactions; and wherever the legislature adopts such language in order to define and promulge their action or their will, the just conclusion from such a course must be, that they not only themselves comprehended the meaning of the language they have selected, but have chosen it with reference to the known apprehension of those to whom the legislative language is addressed, and for whom it is designed to constitute a rule of conduct, namely, the community at large."

Lake County v. Rollins, 130 U. S. 662, at 670-671:

"To get at the thought or meaning expressed in a statute, a contract or a constitution, *the first resort*, in all cases, is to the *natural signification* of the words, in the order of grammatical arrangement in which the framers of the instrument have placed

them. If the words convey a definite meaning which involves no absurdity, nor any contradiction of other parts of the instrument, then that meaning, apparent on the face of the instrument, *must be accepted*, and neither the courts nor the legislature have the right to add to it or take from it. * * * So, also, where a law is *expressed in plain and unambiguous terms*, whether those terms are general or limited, the *legislature should be intended* to mean what they have plainly expressed, and consequently no room is left for construction."

Old Colony R. Co. v. Commissioner, 284 U. S. 552, at 560-561:

"'The legislature *must be presumed* to use words in their *known and ordinary signification*.' *Levy's Lessee v. McCartee*, 6 Pet. 102, 110. 'The *popular or received import* of words furnishes the general rule for the interpretation of public laws.' *Maillard v. Lawrence*, 16 How. 251, 261. And see *United States v. Buffalo Gas Co.*, 172 U. S. 339, 341; *United States v. First Nat. Bank*, 234 U. S. 245, 258; *Caminetti v. United States*, 242 U. S. 470, 485. As was said in *Lynch v. Alworth-Stephens Co.*, 267 U. S. 364, 370, 'the *plain, obvious and rational meaning* of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover.' * * *

"* * *, *In common parlance* the bonded indebtedness of a corporation imports the total face of its outstanding bonds,—the amount which must be paid at their maturity. The phrase is not generally used to connote par plus an unreturned proportion of premium.

"And as respects 'interest,' the *usual import* of the term is the amount which one has contracted to pay for the use of borrowed money. * * * We cannot believe that Congress used the word having in mind any concept other than the *usual, ordinary and everyday meaning of the term,* * * *."

Hearst Publications, Inc., et al, v. National Labor Relations Board, 136 F. (2d) 608, at 612 [R. p. 1848]:

"Since the term 'employee' is not defined in the Act, we agree with petitioners' contention that it must be given its conventional meaning as developed under the common law and statutory enactments."

B. Congress Did Not Give a Comprehensive Definition of the Term "Employee" in:

1. *Social Security Act,* August 10, 1939, c. 666, Title IX, Sec. 905(a), 53 Stat. 1400; 42 U. S. C. A., Sec. 1011(b).

"The term 'employment' means any service of whatever nature performed within the United States by an employee for his employer, except—agricultural * * * domestic, * *, *." (8 exceptions.)

2. *Federal Employers' Liability Act,* 53 Stat. 1404, August 11, 1939, c. 685, Sec. 1; 45 U. S. C. A. Sec. 51.

"Every common carrier * * * shall be liable in damages to any person suffering injury while he is employed by such carrier * * *."

3. *Fair Labor Standards Act,* 52 Stat. 1060, June 25, 1938, c. 676, Sec. 3; 29 U. S. C. A. Sec. 203.

"'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee * * *.

"'Employee' includes any individual employed by an employer."

4. *Federal Safety Appliance Act*, March 2, 1893, c. 196 and amendments; 27 Stat. 531; 45 U. S. C. A. Secs. 1-46. Apparently an entire absence of definition.

5. *Merchant Marine Act*, 41 Stat. 1007, June 5, 1920, c. 250, Sec. 33; 46 U. S. C. A. Sec. 688.

"Any seaman who shall suffer a personal injury in the course of his employment may, at his election, maintain an action for damages at law * * *."

6. *Longshoremen's and Harbor Workers' Compensation Act*, March 4, 1927, c. 509, Sec. 2, 44 Stat. 1424; 33 U. S. C. A. Sec. 902.

"The term 'employee' does not include a master or member of a crew of any vessel nor any person engaged * * * to load or unload * * * any small vessel * * *.

"The term 'employer' means an employer any of whose employees are engaged in maritime employment * * *."

7. *National Labor Relations Act*, July 5, 1935, c. 372, Sec. 2, 49 Stat. 450; 29 U. S. C. A. 152(3).

"The term 'employer' includes any person acting in the interest of an employer directly or indirectly * * *.

"The term 'employee' shall include any employee * * * but shall not include" an agricultural laborer, domestic servant, child or spouse.

C. In Each Instance the Courts Have Declared That Congress Used the Word in Its Ordinary Sense and Intended to Describe the Conventional Relation of Employer and Employee.

1. SOCIAL SECURITY ACT.

Anglim v. Empire Star Mines Co. (9 C. C. A.), 129 F. (2d) 914, 916-917:

"Applying the ordinary legal tests as the statute appears to have intended, the trial court concluded that the Leasers were independent contractors. * * * However, in defining the required relationship * * * the regulations do no more than reiterate the familiar principles of the common law."

Williams v. U. S. (7 C. C. A.), 126 F. (2d) 129, 132 (certiorari denied, 317 U. S. 655):

"It has been held by this and other courts that employment within the meaning of the statute connotes the legal relationship of employer and employee as those terms were defined and understood at the time of the enactment—furthermore, that an independent contractor is not an employee."

U. S. v. Griswold (1 C. C. A.), 124 F. (2d) 599, 601:

"We held that 'an employee is one who meets the test of the more or less established concept of the "legal relationship of employer and employee." * * *

"The relationship of employer and employee in the ordinary sense does not exist here."

Deecy Products Co. v. Welch (1 C. C. A.), 124 F. (2d) 592, 597:

"* * * The words 'employ', 'employer' and 'employee' are to be taken in their ordinary meaning.

It seems clear that the question whether a person is an employee in all cases turns on the existence of the more or less established concept of the 'legal relationship of employer and employee'."

Jones v. Goodson (10 C. C. A.), 121 F. (2d) 176, 180:

"It must be presumed that Congress was cognizant of its well-established principles at the time of the enactment of the statute and that if different guides were intended for ascertaining whether the relationship of employer and employee existed between parties in the application of the statute, appropriate language would have been used to indicate such purpose. There is nothing in the act or its legislative history which indicates such an intent."

Indian Refining Co. v. Dallman (7 C. C. A.), 119 F. (2d) 417:

"There is nothing in the Social Security Act which suggests that the terms 'employer' and 'employee' should receive anything but their *ordinary construction.*"

(31 F. Supp. 460.)

2. FEDERAL EMPLOYERS' LIABILITY ACT.

Robinson v. B. & O. R. R., 237 U. S. 84, 94:

"We are of the opinion that Congress used the words 'employee' and 'employed' in the statute in their *natural* sense, and intended to describe the *conventional* relation of employer and employee."

Hull v. P. & R. Ry. Co., 252 U. S. 475, 479;

Wells Fargo v. Taylor, 254 U. S. 175, 187.

3. FAIR LABOR STANDARDS ACT.

Bowman v. Pace Co. (5 C. C. A.), 119 F. (2d) 858, 860:

"The strongly contested issue is whether he was an employee of the Pace Company at all. * * * It is not the purpose of the Fair Labor Standards Act to create new wage liabilities, * * *."

4. FEDERAL SAFETY APPLIANCE ACT.

Stevenson v. Lake Terminal R. Co. (6 C. C. A.), 42, F. (2d) 357, 358-359:

"The Congressional failure to define the term 'employee' * * * has evoked a large amount of litigation. * * * and the Supreme Court has held that the term 'employee' in the Employers Liability Act describes the *conventional* relation of master and servant."

5. MERCHANT MARINE ACT.

Loe v. Goldstein (9 C. C. A.), 101 F. (2d) 967, 971:

"It is evident that an injured seaman is granted a cause of action by the foregoing section only against one as to whom he occupies the *conventional* relationship of 'employee'."

6. LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT.

Cardillo v. Mockabee (C. C. A. D. C.), 102 F. (2d) 620, 622:

"There is nothing in the act to destroy the common law meaning of 'independent contractor'."

7. NATIONAL LABOR RELATIONS ACT.

Hearst Publications, Incorporated v. National Labor Relations Board, 136 F. (2d) 608, 611-612 [R. pp. 1843-1852]:

"The Act does not specifically define either the term 'employer' or the term 'employee,' but says simply 'the term "employee" shall include any employee.' Since the Act contains no precise definitions, the publishers contend that Congress intended to use the words in their ordinary and conventional sense as understood at the time the statute was enacted." [R. p. 1847.]

"Since the term 'employee' is not defined in the Act, we agree with petitioner's contention that it must be given its conventional meaning as developed under the common law and statutory enactments." [R. p. 1848.]

D. That Congress Used the Term "Employee" in the National Labor Relations Act in Its Natural and Conventional Sense Is Persuasively Indicated by (1) Language of the Act; (2) Rules and Regulations Implementing National Labor Relations Act; and (3) Decisions and Orders of the National Labor Relations Board in the Houston Newsboys Case and in the Case at Bar.

(1) LANGUAGE OF THE ACT.

(a) *Definitions* (29 U. S. C. A., Sec. 152):

"When used in Sections 151-166 of this Title—

(2) the term 'employer' includes any person acting in the interest of an employer directly or indirectly. (*exclusions then stated*) * * *.

(3) the term 'employee' shall include any employee and shall not be limited to the employees of a particu-

lar employer unless the chapter explicitly states otherwise (*inclusions and exclusions then stated*) * * *."

(b) *Rules and Regulations* (29 U. S. C. A., Sec. 156):

"The Board shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of Sections 151-166 of this Title."

(2) RULES AND REGULATIONS OF BOARD IMPLEMENTING NATIONAL LABOR RELATIONS ACT.

(a) *Definitions* (29 U. S. C. A., App. p. 561):

"Sec. 201.1. Terms Defined in Section 2 of the Act. The terms * * * 'employer,' 'employee,' * * * as used herein shall have the meaning set forth in Section 2 of the National Labor Relations Act, * * *."

(3) DECISIONS AND ORDERS OF THE NATIONAL LABOR RELATIONS BOARD IN THE HOUSTON NEWSBOYS CASE AND IN THE CASE AT BAR.

(a) *In the Matter of Houston Chronicle Publishing Co. and Houston Newsboys Union, Local 456, 28 N. L. R. B. 1043.*

Although no specific mention is made in the opinion of the interpretation given the term "employee" in the National Labor Relations Act, the recital of the controlling facts of record and the finding of the Board that these facts indicate these "newsboys are not 'employees' within the meaning of the Act" definitely indicates that the Board was construing the term in its legal, natural and conventional meaning.

(b) *Decision and Direction of Elections in Case at Bar.*

"Section 2(3) of the Act provides in part: 'When used in this Act—(3) the term "employee" shall include any employee * * *'. In cases where the status of an individual was challenged we have indicated that the statutory definition of the term 'employee' *embraces all employees in the conventional as well as legal sense, except those by express provision excluded* and that the primary consideration in the determination of the applicability of the statutory definition is whether effectuation of the declared *policy and purposes of the Act* comprehend securing to the individual the rights guaranteed and protection afforded by the Act."[2] [R. 108-109, footnote 33.]

E. The Decision in the Case at Bar Does Not Conflict With

1. *Walker v. Altmeyer* (C. C. A. 2), July 12, 1943.
2. *Gray v. Powell*, 314 U. S. 402.

1. WALKER V. ALTMEYER (SUPRA).

The proceeding was under the Social Security Act. Heretofore (Point I-C) are cited several cases construing the term employer and employee as used in that act. There is no intimation in the *Altmeyer* case of disagreement with any of these prior decisions from the various circuits. It may not be assumed when one reads the names of the circuit judges participating in the opinion that all were unmindful of these several former decisions.

The *Altmeyer* case relies upon and cites only *Gray v. Powell (supra)*.

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[2]This language of the Board's decision was quoted in the opinion of the Circuit Court of Appeals (136 F. 2d. 608, 612 [R. 1847]).

2. GRAY V. POWELL (SUPRA).

The Seaboard Air Line Railway Company became lessee of certain coal lands and mined the coal through an independent contractor. All the coal was consumed by the railroad. Under the Bituminous Coal Act of 1937 (15 U. S. C. A. Secs. 828 *et seq.*), producer-consumers of coal were exempted from its provisions. Section 4-A of the Act set up machinery for obtaining exemptions. Receivers of the Railway Company, claiming that the railroad was a producer as well as consumer of coal, filed an application under Section 4-A for exemption from the Act. The exemption was denied. On review by the Circuit Court of Appeals the order was reversed (*Powell v. Gray*, 114 F. (2d) 752). Certiorari was granted (311 U. S. 644) and the decree below affirmed by an equally divided court (312 U. S. 666). Subsequently a petition for rehearing was granted (313 U. S. 596). On rehearing this court reversed the judgment of the Circuit Court of Appeals (314 U. S. 402).

This court, after quoting Section 4-A of the Act, said:

> "In a matter left specifically by Congress to the determination of an administrative body, as the question of exemption was here by Sections 4-II(1) and 4-A, the function of review placed upon the courts by Section 6(b) is fully performed when they determine that there has been a fair hearing, with notice and an opportunity to present the circumstances and arguments to the decisive body, and an application of the statute in a just and reasoned manner.
> * * *
>
> "Such a determination as is here involved belongs to the usual administrative routine. Congress, which could have legislated specifically as to the individual

exemptions from the code, found it more efficient to delegate that function to those whose experience in a particular field gave promise of a better informed, more equitable, adjustment of the conflicting interests of price stabilization upon the one hand and producer consumption upon the other."

314 U. S. 411-412.

Continuing, the court said:

"Just as in the *Adkins* case [310 U. S. 381] the determination of the sweep of the term 'bituminous coal' was for this same administrative agency, so here there must be left to it, subject to the basic prerequisites of lawful adjudication, the determination of 'producer'."

314 U. S. 412-413.

The Supreme Court, however, examined the facts, pointing out that

"If independent contractors are employed for extraction, there is an obvious breach in the full consumer-producer identity. This may create consequences which would not follow if the enterprise itself, through its own employees, accomplished the same ultimate result."

314 U. S. 413.

The principle involved in *Gray v. Powell* is explained and applied in the opinions of this court in:

Sunshine Coal Co. v. Adkins, 310 U. S. 381.

and

Shields v. Utah Idaho Central R. Co., 305 U. S. 177.

Sunshine Coal Co. v. Adkins (supra). This case involved the Bituminous Coal Act of 1937.

> "Machinery is provided in Section 4-A [of said Act] for obtaining exemptions. A producer who believes that any commerce in coal is not, or may not be made, subject to the provisions of Section 4 may file an application for exemption with the commission."
>
> 310 U. S. 389.

The company "filed an application for exemption on the grounds that its coal was not bituminous coal as defined in Section 17(b) of the Act" (310 U. S. 390). The Commission denied the application for exemption, and this holding was affirmed by the Circuit Court of Appeals (*Sunshine Coal Co. v. National Bituminous Coal Commission,* 105 F. (2d) 559). Certiorari was denied (308 U. S. 604). Thereupon the company instituted the present action against the Collector of Internal Revenue to enjoin collection of the tax. The bill was dismissed on the merits and the plaintiff appealed. The Supreme Court in affirming the judgment of dismissal held that there was no invalid delegation of legislative or judicial power (310 U. S. 399-400). It said:

> "The question of whether or not appellant should be subjected to the regulatory provisions of the Bituminous Coal Act was one which the Congress could decide in the exercise of its powers under the commerce clause. In lieu of making that decision itself, it could bring to its aid the services of an administrative agency. And it could delegate to that agency the determination of the question of fact whether a particular coal producer fell within the Act."
>
> 310 U. S. 400.

Shields v. Utah Idaho Central R. Co. (supra.)

The Railway Labor Act does not apply to an interurban electric railway unless it is operating as a part of a general steam-railroad system. The Interstate Commerce Commission is authorized to determine after hearing whether any line operated by electric power comes within the terms of the proviso [45 U. S. C. A. Sec. 151, subsec. first]. The result is that an electric line engaged in interstate commerce but not operating as a part of a general steam-railroad system, would come under the jurisdiction of the National Labor Relations Board as to its employees. The Commission determined that the Utah Idaho Central Railroad was not an interurban railway. Thereupon, the railroad company brought an action in the Federal Court against Shields, United States District Attorney for the District of Utah, to restrain him from prosecuting any proceedings based upon an alleged violation of the Railway Labor Act. The District Court took jurisdiction, permitted the respondent to try the question *de novo*, decided that the railroad was an interurban electric railway, and granted a permanent injunction. The Circuit Court of Appeals affirmed (95 F. (2d) 911). This Court granted certiorari (304 U. S. 556).

In reversing the judgments below, this Court held:

> "The conferring of authority upon the Interstate Commerce Commission to determine whether a particular electric railway is an interurban one cannot be regarded as an unconstitutional delegation of power."

305 U. S. 181.

The court, however, examined the evidence and concluded that

> "There is no principle of law which required such a carrier to be classified as an interurban railway."
>
> 305 U. S. 187.

In the National Labor Relations Act there is no attempt at any delegation of authority to the Board to determine the meaning of the word employer and employee, unless perchance (and this we would not concede if it were in issue) such delegation is implied from the language of the Act authorizing the Board to make rules and regulations to carry out the provisions of the Act (29 U. S. C. A. Sec. 156). However, as we have pointed out heretofore (*Ante* Sec. 1-D(2), p. 12), the Board under the power thus conferred has declared that the terms shall have the meaning set forth in Section 2 of the Act (29 U. S. C. A. App. p. 561, Sec. 201.1). Accordingly, the problem resolves itself into a determination of whether or not the record discloses substantial evidence to support the finding that the newsboys are employees within the natural, legal and conventional meaning of that term.

The cases relied upon by petitioner, namely:

Walker v. Altmeyer (supra);

Gray v. Powell (supra);

South Chicago Coal & Dock Co. v. Bassett (supra);

Shields v. Utah Idaho Central R. Co. (supra);

Rochester Telephone Corp. v. U. S., 307 U. S. 125;

Sunshine Coal Co. v. Adkins (supra),

involved the application of the principle that Congress may, subject to certain safeguards, delegate to a Board legislative power to determine whether particular conditions or circumstances fall within a specified exception to or exemption from the Act. This principle would be necessary of application where it is claimed that the group under consideration are agricultural laborers or domestic servants (29 U. S. C. A. 152(3)).

In *Gray v. Powell (supra)* and *Sunshine Coal Co. v. Adkins (supra)* [Sec. 4-A of the Bituminous Coal Act of 1937 (15 U. S. C. A. Sec. 834)—see Appendix B], Congress delegated to an administrative board the power to determine whether the particular facts brought the Coal Company within the exemption. Instead of drawing a "statutory line" (310 U. S. 399) marking the limits of the exemption Congress invested the Board with power to determine "upon which side of the mediam line the particular instance falls." (314 U. S. 413.)[3]

In *Shields v. Utah Idaho Central R. Co. (supra)* the Railway Labor Act by a proviso "excepts any 'interurban' electric railway unless it is operating as a part of a general steam-railroad system" (305 U. S. 179), and the Act expressly authorized and directed the Interstate Commerce Commission "to determine after hearing whether any line operated by electric power falls within the terms of this proviso." (45 U. S. C. A., Sec. 151.)

---

[3]Under the Bituminous Coal Act of 1937, a consumer who is also a producer of coal is exempted. In the *Gray* case appellees were engaged in producing coal upon leased premises through an independent contractor. The case turned largely on the distinction between the production of coal through an independent contractor and the production of coal by the consumer's "own employees" (314 U. S. 413).

In these respects the National Labor Relations Act is distinguishable from the Bituminous Coal Act of 1937 and the Railway Labor Act. In the case at bar there is no question of any exemption from or exception to the National Labor Relations Act. (See *ante* p. 19.) Respondent has consistently claimed throughout, and the opinion of the Circuit Court of Appeals is to the effect, that the controversy is not within the purview of the National Labors Relations Act because the newsboys are not employees within the meaning of the term as it is used in the Act.

There are no provisions in the Act corresponding to Section 4-A of the Bituminous Coal Act of 1937 [App. B], or to the proviso of the Railway Labor Act [App. B]. On the contrary, under Section 10 the Board's authority extends only to action concerning unfair labor practices which "'are strictly limited to those enumerated in Section 8'" (*Phelps Dodge Corp. v. Labor Board*, 313 U. S. 177, 185). The only unfair labor practices listed in Section 8 are those directed against employees or, in the single instance of Section 8(3) (not here involved), to an *applicant for employment*. Under Section 7 it is only employees who are given the right to self-organization, etc.

The question of the meaning and scope of the term "employee" is exclusively a judicial function (*U. S. v. American Trucking Associations*, 310 U. S. 534, 544, quoted *supra*) and is not a legislative or administrative function delegated to the respondent Board. Accordingly, the finding of the Board that the newsboys were employees was not conclusive upon the Circuit Court of Appeals, which, as we understand the authorities, was authorized and required to examine the record for the purpose of

determining whether the Board's finding was supported by substantial evidence, and in such investigation to interpret the term employee in the light of rules of statutory interpretation, such as the Federal Courts have announced in the interpretation of the term employee in other cognate social legislation.

F. Summary of Point I.

In the last sentence of Petitioner's Brief (p. 25) preceding CONCLUSION, this summary of petitioner's position appears:

> "It is important both in the interpretation of the National Labor Relations Act and of such legislation as the Social Security Act and the Fair Labor Standards Act that the lower courts be advised whether 'employee' is to be interpreted in an enlightened manner which gives effect to the realities of economic relationships and the power of the employer or is to be given a narrow construction such as the court below applied in the case at bar."

With equal propriety reference might have been to Federal Employers' Liability Act, Fair Labor Standards Act, Federal Safety Appliance Act, Merchant Marine Act and Longshoremen's and Harbor Workers' Compensation Act. Each of these acts is like unto the National Labor Relations Act and should be, and, we believe, has been, interpreted in an enlightened manner, giving effect to the policies and the context of the Act.

As the Circuit Court of Appeals said:

> "The term 'employee' has been interpreted under several federal statutes, other than the National Labor Relations Act, in like manner based upon a broad policy of public benefit." [R. 1848.]

Following this statement reference is made to cognate social legislation and decisions of the Federal Courts construing the term "employee" as therein used. (136 F. (2d) 608, 612 [R. 1848].)

The Fourth Specification of Error urged (Pet. p. 13 [4]) viz.,

> "4. In holding that the Board is required to follow the common law definition of employment without regard to the policies or context of the Act"

is predicated upon an incorrect conception of the rule of interpretation employed by the lower court.

Conflict of Federal Court decision is conspicuously absent in the interpretation of the term employee appearing in federal social welfare legislation. There is a line of decisions without, so far as we are able to discover, any deviation from the rule of interpretation hereinbefore set forth. The decision and opinion of the lower court in the case at bar follows this well defined line of precedent. The Ninth Circuit Court of Appeals in the case at bar declared:

> "The term 'employee' has been interpreted under several federal statutes other than the National Labor Relations Act, in like manner based upon a broad policy of public benefit." [R. 1848.]

This language does not justify the statement of petitioners:

> "We think that the court erred in attempting to interpret 'employee' without giving any weight to the policies and purposes of the National Labor Relations Act." [Pet. p. 17.]

POINT II.

The Circuit Court of Appeals Decided That the Findings of the Board Are "Not Supported by Substantial Evidence." [R. 1851.] The Court Did Not Decide the Case Upon an Independent Consideration of the Facts, Failing to Give Any Weight to the Board's Determination (Pet. p. 13 [3]): Neither Did the Court Rule That It Was Entitled to Determine De Novo Whether or Not the Newsboys Were Employees (Pet. p. 13 [1]) as Petitioner Contends.

A. The Findings of the Board Are Conclusive Only When Supported by Substantial Evidence. More Than a Scintilla Is Required. Evidence Sufficient to Create a Suspicion of the Existence of the Fact to Be Established Is Not Adequate. Relevant Evidence Reasonably Acceptable as Adaquate to Support a Conclusion Must Appear.

1. *National Labor Relations Board v. Columbian Enameling & Stamping Co.*, 306 U. S. 292, 299-300:

"Section 10(e) of the Act provides: '. . . The findings of the Board as to the facts, if supported by evidence, shall be conclusive.' But as has often been pointed out, this as in the case of other findings by administrative bodies, means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred (citing cases). 'Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'"

2. *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 229:

"The companies contend that the Court of Appeals misconceived its power to review the findings and, instead of searching the record to see if they were sustained by 'substantial' evidence, merely considered whether the record was 'wholly barren of evidence' to support them. We agree that the statute, in providing that 'the findings of the Board as to the facts, if supported by evidence, shall be conclusive,' means supported by substantial evidence (citing authority). Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

3. *National Labor Relations Board v. Virginia Electric & Power Co.*, 314 U. S. 469, 476:

"The command of Sec. 10(e) of the Act that 'the findings of the Board as to the facts, if supported by evidence, shall be conclusive,' precludes an independent consideration of the facts."

4. *Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board*, 301 U. S. 142, 147:

"The complaint is merely of error in appreciating and weighing evidence. In the case of statutory provisions like Sec. 10(e), applicable to other administrative tribunals, we have refused to review the evidence or weigh the testimony and have declared we will reverse or modify the findings only if clearly improper or not supported by substantial evidence."

5. *National Labor Relations Board v. Sun Shipbuilding & Dry Dock Co.* (3 C. C. A.), 135 F. (2d) 15, 25:

"It is our duty to accept as conclusive such of the Board's findings of fact as are supported by evidence (citing cases). Section 10(e) of the Act, 29 U. S. C. A. Sec. 160(e), so requires. The term 'evidence' as used in this connection means 'substantial evidence', that is, 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion' (citing cases), and affords 'a substantial basis of fact from which the fact in issue can be reasonably inferred' (citing cases). While it is for the Board, therefore, to find the facts and to draw material inferences from the evidence (citing cases), it is for a reviewing court to say whether the Board's findings are supported by substantial evidence and whether its conclusions are reasonably inferable from the evidence which it accredits. Guided by these standards, it is our opinion that the Board's findings of unfair labor practices on the part of the respondent are not supported by substantial evidence."

B. From the Opinion of the Circuit Court of Appeals It Is Manifest That the Question Considered Was: Is the Finding of the Board Supported by Substantial Evidence.

1. EXCERPTS FROM OPINION:

(a) "The question for decision as to each newspaper separate from any other paper is whether there is substantial evidence * * * to support the Board's decision that they were employees under Section 2 (3) of the National Labor Relations Act." [R. 1849-1850.]

(b) "* * * we believe * * * that there is not substantial evidence herein to support the Board's determination that the newsboys are 'employees' of the publishers * * *." [R. 1850.]

(c) "We think the Board is not supported by substantial evidence in its finding that the 'newsboys' are employees of the publisher whose newspaper they vend." [R. 1851.]

C. Summary of Point II.

The quotations immediately preceding indicate that the court examined the record for the purpose of determining whether it contained substantial evidence to sustain the Board's finding. Discovering no substantial evidence the court had no alternative other than to set aside the order.

The third specification of error, viz.,

> "The Circuit Court of Appeals erred:
>
> * * * 3. In holding that the issue presents a question of law for the court to decide for itself and in failing to give any weight to the Board's determination that newsboys are employees within the meaning of the Act." (Pet. p. 13.)

assigns to the court an avenue of approach which it did not follow. If petitioner contends that the findings of the Board are supported by substantial evidence, the specification of error should have been, in effect at least, that the court erred:

> In holding that the finding of the Board (that the newsboys are employees of the publisher whose newspaper they vend) is not supported by substantial evidence.

POINT III.

Consideration of Specifications of Errors Assigned.

A. Petitioner Contends That the Circuit Court of Appeals Erred (Pet. p. 13).

"1. In holding that the Board's denial of respondent's claim of exemption from the statute was improper."

Respondent contends that the court did not so hold. This respondent and, so far as we are informed, respondents in the other three cases made no claim of exemption. Respondent contends that the news vendors are not employees within the meaning of that term of the Act. The Board was without jurisdiction because the news vendors are not employees. As we understand, an exemption applies to employees working "as an agricultural laborer or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse." (29 U. S. C. A., Sec. 152[3].) Accordingly, exemptions apply to certain classes of employees.

"2. In holding that the newsboys are 'independent contractors'."

The court did not hold that the newsboys are independent contractors. The court held that the finding of the Board that the newsboys are employees is not supported by substantial evidence [R. 1851]. The issue before the Board was whether or not the newsboys were employees of the respondents. If they are not employees, it may or may not follow that they are independent contractors. The term "employee" must be considered as it is used in the National Labor Relations Act. A consideration of whether the newsboys are independent contractors will lead us far afield.

"3. In holding that the issue presents a question of law for the court to decide for itself and in failing to give any weight to the Board's determination that newsboys are employees within the meaning of the Act." [Pet. p. 13.]

This assignment is considered *ante* under Point II, B, pages 25 and 26.

"4. In holding that the Board is required to follow the common law definition of employment without regard to the policies or context of the Act." [Pet. p. 13.]

This matter is considered *ante* under Point I, page 22.

"5. In failing to hold that the relationship involved herein is a personal service relationship which, even under common law standards, clothes the newsboys with employee status." [Pet. p. 13.]

This assignment is developed in the petition, pages 23 and 24. There it is contended that the court "seems to have given undue weight to the fact that, as persons not working on respondent's premises, their activities were not controlled to the same extent as are those of inside workers and to the fact that the transactions took the form of a sale." This respondent is not aware that the court gave any consideration to the fact that the newsboys were working either within or without the premises. Petitioner's contention and authorities cited in support thereof appear to be without any application. The fact that the transactions took the form of a sale is one of a series of criteria disclosed by the record and referred to by the court. A reading of the single paragraph of the opinion where a summary of such criteria appears [R. 1850-1851] indicates that it is one of many.

POINT IV.

Consideration of Petitioner's Statement.

To the statement of petitioner we take exception. There are four entirely separate and distinct cases here involved. In the taking of evidence before the Board the cases were considered separately, and there are many stipulations in the record to this effect. Counsel for the Board, however, throughout in their briefs and in the pending petition insist on weaving the evidence of all four cases into one pattern. Although in many instances counsel for petitioner have painstakingly cited record references applicable to each petitioner, diligent checking of these references relating to the petitioner Los Angeles Times discloses that in some instances the record is precisely to the contrary of petitioner's statement, and in other instances the record does not support the context.[4]

The statement of petitioner is inaccurate in the sense of incomplete in that it omits a recital of important admitted facts which the Board in another newsboys' case[5] decided the same date considered controlling of the issue. Such facts are

1. The newsboys are not carried on the Los Angeles Times' payroll [R. 1343].

2. The newsboys receive no money or other thing of value from the Times for selling its newspapers R. 1294].

---

[4]Illustrations in support of this statement may be found in Appendix A.

[5]*Matter of Houston Chronicle Publishing Co.*, 28 NLRB 1043; footnote (3), 1046.

3. The newsboys are not registered as employees with the Social Security Board [R. 1344].

4. The newsboys are not covered by Workmen's Compensation insurance carried by the Los Angeles Times on its employees [R. 1344].

5. The Los Angeles Times kept no list of the names of newsboys selling its papers or the locations where they operated [R. 1149, 1153-1154, 1295-1296].

6. The newsboys take the risk of lost, destroyed or stolen papers or papers sold by them on credit [R. 1194-1195].

7. The newsboys sell other local competing newspapers and periodicals [R. 1260-1269].

Perhaps we may be justified in also pointing out that the Board (Regional Director) found that 457 newsboys engaged in street sales of the Los Angeles Times were eligible to vote in the election [R. 191]; that the Board in finding that these 457 newsboys were Times' employees relied on the testimony of only 5 witnesses. These witnesses testified concerning their individual and personal dealings and of isolated occurrences not arising to the dignity of a general or uniform practice. They are:

1. Roy Eley [R. 1181-1211];
2. John Roberts [R. 1211-1243];
3. Philip Tellis [R. 1243-1249];
4. John Fields [R. 1249-1280, 1328-1342];
5. Edward Patch [R. 1313-1328].

The testimony given by these 5 Times' newsboys upon which the Board made its finding embracing 452 additional newsboys, relates for the most part to the individual experiences of each of the 5. There is nothing in the evidence to justify a finding that such was the common experience of all or of any considerable number or that such experiences were typical of the relations between the Times and the remaining 452 newsboys. This circumstance was raised before the trial examiner, who, upon inquiry from the chief trial examiner at Washington, was advised by wire:

> "'Evidence should be introduced to show that persons signing cards are employees. Burden is on Petitioner to show this fact. I assume Respondent denies card signers occupy position of employees. If so, evidence should be introduced to show what each individual does * * *.'" [R. 1493.][6]

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[6]Following the receipt of this wire the following colloquy occurred between counsel for the Board and the trial examiner:

"Mr. Mouritsen: Let me then understand what the Trial Examiner's idea is on what further evidence should be put in, or the type of evidence.

Trial Examiner Kennedy: Evidence should be introduced to show what each individual does. Now, I do not think that has been done." [R. 1513.]

Conclusion.

Petitioner has shown no sufficient ground for writ of certiorari. The principal grounds (as we understand) relied upon are:

1. A conflict of decision between *Walker v. Alimeyer (supra)* and *Gray v. Powell (supra)* on the one hand and, on the other, the decision of the Circuit Court of Appeals, Ninth Circuit, in the case at bar, and

2. The failure of the Circuit Court of Appeals, Ninth Circuit, in the case at bar in interpreting the word employee to give any weight to the policies and purposes of the National Labor Relations Act.

These contentions we believe to be without merit.

This case is not one of general importance. No matter of general interest to the public is involved. The petition should be denied.

Fields v. United States, 205 U. S. 292, 296.

Respectfully submitted,

T. B. COSGROVE,

JOHN N. CRAMER,

Attorneys for Respondent The Times-Mirror Co.

APPENDIX A.

Illustrations of Incorrect or Inaccurate Suggestions of Fact in Petitioner's Statement:

1. "The district managers keep lists of the newsboys in their districts, the locations where they are stationed, the quota assigned to each boy * * * [Times R. 504-521; * * *]."

[Pet. p. 6.]

The foregoing statement relates to an important matter. The statement is incorrect with reference to the Los Angeles Times. The record, pp. 504-521, contains a list of Los Angeles Times' hustlers (newsboys) and the corners where they operate, but the record at pp. 1149, 1153-1154, 1295-1296, discloses that at the commencement of the hearing the Los Angeles Times had no such list but at the request of counsel for the Board and to expedite the presentation of the Board's case the Times' attorneys suggested to the executives of the Times that such a list be prepared, and accordingly this was done. In the Board's brief filed with the Circuit Court of Appeals, this same erroneous statement appeared, and the error of the statement was there pointed out in the petitioner's reply brief.

2. "The district managers keep lists of the newsboys in their districts * * * the names of the checkman or 'main spot' boys through whom they distribute and the amounts so subdistributed (* * * Times R. 504-521 * * *)."

[Pet. p. 6.]

"Checkmen both receive papers for themselves and also for distribution to other newsboys in the vicinity."

[Pet. p. 6, Note 3.]

The record reference in the above quotation, as explained in the preceding paragraph relates to a list of names and locations. There is no reference at pages 504-521 or elsewhere to Los Angeles Times' checkmen. The record discloses that the Los Angeles Times had no checkmen [R. 90, footnote 18]. This circumstance was admitted by the Board in its briefs before the Circuit Court of Appeals [Br. 19].

3. "The checkman and newsboys regard themselves as employees [R. 820, 825, 853, 871, 893-894, 898, 1464], were so regarded by representatives of respondents [R. 585, 696, 717, 802, 820, 1116, 900, 1122, 1332, 1484], and by the public [R. 746-747, 969-972, 1040, 1122-1123]." [Pet. pp. 11-12.]

In this series of record references there is but one, viz., 1332, that refers to the Los Angeles Times. The record at page 1332 falls short of sustaining the context.

This statement illustrates how easily one may receive an incorrect impression of the record as to one of the respondents when the evidence in all four cases (despite the splendid industry and ability of counsel) is woven into one pattern.

4. "The newsboys are 'hired' and 'fired', disciplined, directed, and supervised (see pp. 8-10 *infra*) by respondents through supervisory employees known as the 'district manager' or the 'district man' [* * * Times R. 1156; * * *]."

[Pet. p. 6.]

The record reference above given is confined to an identification of the term district man. Turning to pp. 8-10 of the Petition we encounter a large number of record references, a summary of all of which may not be justified here. We think they do not sustain the charge of hiring, firing and disciplining. The matter is illustrated by statement in the Petition, p. 8. There it is said:

"The newsboys are subject to removal at will and to transfer or disciplinary lay-offs by the district managers * * *."

The right of the respondent to decline to have further relations with the newsboys and to refuse to further deal with them we think is a fair interpretation of the testimony. An exercise of such right is consistent with a partnership status or that of independent contractors.

APPENDIX B.

Excerpt from Section 4-A of the Bituminous Coal Act of 1937 (15 U. S. C. A., Sec. 834, second paragraph) involved in *Gray v. Powell*, 314 U. S. 402, and *Sunshine Coal Co. v. Adkins*, 310 U. S. 381:

"Any producer believing that any commerce in coal is not subject to the provisions of sections 831, 832 and 833 or to the provisions of the first paragraph of this section may file with the Commission an application, verified by oath or affirmation for exemption, setting forth the facts upon which such claim is based. The filing of such application in good faith shall exempt the applicant, beginning with the third day following the filing of the application, from any obligation, duty, or liability imposed by sections 831, 832 and 833 with respect to the commerce covered by the application until such time as the Commission shall act upon the application. If the Commission has reason to believe that such exemption during the period prior to action upon the application is likely to permit evasion of the subchapter with respect to commerce in coal properly subject to the provisions of sections 831, 832 and 833 or of the first paragraph of this section, it may suspend the exemption for a period not to exceed ten days. Within a reasonable time after the receipt of any application for exemption the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of such application. As a condition to the entry of and as a part

of any order granting such application, the Commission may require the applicant to apply periodically for renewals of such order and to file such periodic reports as the Commission may find necessary or appropriate to enable it to determine whether the conditions supporting the exemption continue to exist. Any applicant aggrieved by an order denying or otherwise disposing of an application for exemption by the Commission may obtain a review of such order in the manner provided in subsection (b) of section 836. April 26, 1937, c. 127, Sec. 4-A; 50 Stat. 83."

Excerpt from the Railway Labor Act (45 U. S. C. A., Sec. 151, subd. first) involved in *Shields v. Utah Idaho Central R. Co.*, 305 U. S. 177:

"First. The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to chapter 1 of Title 49, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier': *Provided, however*, That the term 'carrier' shall not include any street, interurban, or suburban electric

railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term 'carrier' shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities."

FILED

IN THE

Supreme Court of the United States

October Term, 1943

No. 339

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

THE TIMES-MIRROR COMPANY,

Respondent.

Brief of Respondent, The Times-Mirror Company.

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Supreme Court of the United States

October Term, 1943

No. 339

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

THE TIMES-MIRROR COMPANY,

Respondent.

BRIEF OF RESPONDENT.

I.

Opinion Below.

The opinion [R. 1843] of the Circuit Court of Appeals (9th Circuit) is reported

Hearst Publications, Inc. v. National Labor Relations Board and Three Other Cases, 136 F. (2d) 608.

Statement of the Case.

PROCEEDINGS BEFORE NATIONAL LABOR RELATIONS BOARD

(a) Certification Case.

In March, 1940, Los Angeles Newsboys Local Industrial Union No. 75, C. I. O. (herein called Newsboys Union) filed with the Board a Petition for Investigation and Certification of Representatives against The Times-Mirror Company (herein called Times), claiming to have been designated by

> "*all* newsboys selling the Los Angeles Times in the city limits of Los Angeles"

as their representative for collective bargaining [R. 12]. Thereafter, an amended petition was filed alleging the appropriate unit to be

> "*All* newsboys selling the Los Angeles Times within the city limits of Los Angeles *and Glendale*, California, *except* temporary newsboys, casual newsboys, and newsboys who sell Sunday only copies of the Times" [R. 22].

The Times filed a Motion to Dismiss the Petition [R. 24] and an Answer thereto [R. 26]. These pleadings denied that the newsboys were employees of the Times, challenged the jurisdiction of the Board, and denied the appropriateness of the alleged unit.

The Board ordered a hearing on the amended petition and consolidated the proceeding against the Times with similar proceedings pending against three other Los Angeles newspapers [R. 28]. A hearing was held at Los Angeles from June 10, 1940, to June 27, 1940 [R. 524,

1633]. On January 9, 1941, the Board made and filed its Decision and Direction of Election [R. 76-121], wherein it held *certain* newsboys engaged in the street sale of the Los Angeles Times to be employees of the Times, and ordered the Regional Director to conduct an election among

> "All newsboys engaged in the street sale of the Times at *established spots 4 or more* hours a day, *5 or more* days a week, *within* Los Angeles and Glendale, California, *except* temporary newsboys" [R. 121].

The Times filed Objections to the Validity of Direction of Election [R. 150], which the Board overruled [R. 164]. The election was held and an Election Report issued [R. 180]. The Newsboys Union received a majority of the votes cast [R. 183]. The Board certified the Newsboys Union as the exclusive representative of

> "newsboys engaged in the street sale of the Times at *established* spots, *4 or more* hours a day, *5 or more* days a week, *within* Los Angeles and Glendale, California, *excluding* temporary newsboys * * *" [R. 196].

(b) Complaint Case.

On October 3, 1941, a Charge was filed by the Newsboys Union against the Times, alleging the commission of an unfair labor practice, viz., the Times' refusal to bargain with the Newsboys Union [R. 260]. On this Charge the Board issued its Complaint [R. 262], to which the Times filed a Motion to Dismiss and an Answer [R. 267, 269]. The Trial Examiner denied the motion and the Board affirmed his ruling [R. 333-334]. A hearing on the Complaint and Answer was held at Los Angeles

on November 10 and November 12, 1941 [R. 1643, 1662, 1669]. This hearing was consolidated with a similar proceeding against one other Los Angeles newspaper [R. 1645].

On December 4, 1941, the Trial Examiner made and filed his Intermediate Report, finding the Times guilty of the unfair labor practice alleged, namely, refusal to bargain [R. 287, 297]. The Times duly filed Exceptions to the Intermediate Report [R. 303-315], and thereafter orally argued the same before the Board at Washington [R. 330].

On March 30, 1942, the Board rendered its Decision and Order wherein it found the Times guilty of the unfair labor practice alleged, and ordered it to cease and desist from committing the same [R. 331, 349-350].

The Times thereupon (May 1, 1942) filed with the United States Circuit Court of Appeals (9th Circuit) a Petition to Review the Order of the Board [R. 1806], to which the Board filed an Answer and Request for Enforcement [R. 1825]. The Circuit Court of Appeals (9th Circuit) on June 10, 1943, by divided court, announced its decision, setting aside the Order of the Board (136 F. (2d) 608, 614). This court upon Petition of the Board granted a writ of certiorari October 25, 1943.

BUSINESS OF THE TIMES.

The Times is the publisher of Los Angeles Times, a daily and Sunday newspaper of general circulation in the City of Los Angeles and State of California, with a limited circulation outside the state. Its daily out-of-state sales in 1939 were 1.7% of total sales [R. 522]. The Times uses wire services of Associated Press and United Press. The Times publishes numerous features pur-

chased from outside the state. Approximately 14% of the total advertising in Los Angeles Times is national advertising. Considerable newsprint and ink are purchased annually by the Times outside the State of California [R. 64-67]. The record discloses that the Times is engaged in interstate commerce.

METHOD OF STREET DISTRIBUTION AND SALES

Los Angeles Times is a morning paper, but for many years has published night editions, which appear on the streets of Los Angeles on the evening preceding the date line on the paper. These night editions are taken by night district men (employees of the Times, no one of whom is a newsboy or engaged in street sales) from the Times' publishing plant and sold to newsboys at street intersections. The newsboys thereafter resell them to the public. Morning editions of the paper are sold by morning district men who operate in a fashion similar to the night district men; their area of operation is smaller, being confined to the downtown district of Los Angeles [R. 1154-1159].

At the time of hearing in the certification case, and for more than a year prior thereto, night editions of Los Angeles Times (daily issue) were sold to the newsboys for 1½ cents per copy, and the Sunday (Saturday night) issue for 6 cents per copy [R. 1195]. The daily morning editions were sold to the newsboys for 3 cents per copy and 7½ cents per copy for the Sunday issue [R. 1169-1170]. The newsboys in turn resell the daily paper at 5 cents per copy and the Sunday issue at 10 cents per copy.

After the papers are sold to the newsboys, they pay the district men the stipulated purchase price per copy. Unsold copies may be returned for credit at the purchase price [R. 1195]. The newsboys pay for lost or stolen newspapers [R. 1194] and papers sold by them to their customers on credit [R. 1194-1195].

Statement of Questions Involved.

1. Is there substantial evidence in the record to support the finding that newsboys engaged in street sales of Los Angeles Times are Times' employees?

2. Is there substantial evidence in the record to support the finding that the unit appropriate for collective bargaining purposes consisted of

> "all newsboys engaged in the street sale of the Times at *established* spots, 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, *except* temporary newsboys"?

3. Are the findings of the Board that newsboys engaging in street sales of the Los Angeles Times at established spots (as defined by the Board) are Times employees and constitute an appropriate unit for collective bargaining purposes conclusive on the court?

These questions were raised throughout all stages of the proceedings before the Board [R. 24, 26, 40, 150, 152, 154, 183, 267, 269, 303) and the Circuit Court of Appeals [R. 1830-1832].

ARGUMENT.

Summary of the Argument.

POINT ONE:

SUBSTANTIAL EVIDENCE IS MORE THAN A SCINTILLA. EVIDENCE SUFFICIENT TO CREATE A SUSPICION OF THE EXISTENCE OF THE FACT TO BE ESTABLISHED IS NOT ADEQUATE. RELEVANT EVIDENCE REASONABLY ACCEPTABLE AS ADEQUATE TO SUPPORT A CONCLUSION MUST APPEAR.

THE NATIONAL LABOR RELATIONS ACT CONTAINS NO COMPREHENSIVE DEFINITION OF THE TERM "EMPLOYEE" WHEREFORE THE COURTS WILL APPLY THE ORDINARY AND CONVENTIONAL LEGAL MEANING ASCRIBED TO THE TERM AT COMMON LAW AND BY THE COURTS IN COGNATE SOCIAL LEGISLATION.

OF THE 457 NEWSBOYS INVOLVED THE FINDING OF THE BOARD IS PREDICATED ON ISOLATED CIRCUMSTANCES AND CONDUCT RELATING TO BUT FIVE AND IGNORES UNDISPUTED EVIDENCE RELATING TO USUAL, ORDINARY AND CUSTOMARY CONDUCT AND BUSINESS TRANSACTIONS OF THE ENTIRE 457. EVIDENCE OF THE USUAL AND CUSTOMARY MANNER OF BUSINESS TRANSACTION OF THE TIMES AND THE 457 NEWSBOYS INVOLVED DEFINITELY ESTABLISHES A SERIES OF CRITERIA INCONSISTENT WITH EMPLOYER-EMPLOYEE STATUS.

POINT TWO:

THE UNIT DESIGNATED FOR COLLECTIVE BARGAINING PURPOSES IS NOT AN APPROPRIATE ONE. THE BOARD HAS ARBITRARILY AND CAPRICIOUSLY EXCLUDED TIMES VENDORS OPERATING IN THE LOS ANGELES METROPOLITAN AREA UNDER PRECISELY SIMILAR CIRCUMSTANCES AND CONDITIONS AS OTHER VENDORS

INCLUDED. THE REASON ASSIGNED BY THE BOARD FOR THIS ARBITRARY DISTINCTION IS: ALTHOUGH ALL NEWSBOYS IN THE METROPOLITAN AREA ARE ELIGIBLE FOR MEMBERSHIP, THE UNION HAS NOT PERFECTED ITS ORGANIZATION OF THE NEWSBOYS EXCLUDED, BUT HAS PERFECTED ITS ORGANIZATION OF THE NEWSBOYS INCLUDED. THE PURPOSE OF THE ACT IS VIOLATED IF ITS BENEFITS ARE CONFINED TO MEMBERS OF LABOR UNIONS AND DENIED TO NON-MEMBERS. ORGANIZATION OR NOT INTO A LABOR UNION IS NOT AN ADEQUATE STANDARD TO GUIDE THE BOARD'S DECISION.

POINT THREE:

THE FINDINGS OF THE BOARD THAT THE TIMES VENDORS ARE EMPLOYEES AND THAT THE UNIT DESIGNATED IS AN APPROPRIATE ONE ARE NOT BINDING UPON THE COURTS UNLESS SUSTAINED BY SUBSTANTIAL EVIDENCE. THE ACT APPEARS SPECIFIC IN ITS DECLARATION THAT THE FINDINGS ARE CONCLUSIVE ONLY IF SUPPORTED BY THE EVIDENCE [SECTION 10(e)]. THIS COURT HAS SO DECLARED.

THIS CASE DOES NOT INVOLVE THE APPLICATION OF THE RULE ANNOUNCED IN GRAY V. POWELL, 314 U. S. 402.

THE BOARD IS NOT HERE DETERMINING UNDER A SPECIFIC DELEGATION OF POWER WHETHER THE FACTS ARE WITHIN A SPECIFIED EXCEPTION TO A STATUTE.

POINT ONE.

There Is No Substantial Evidence to Support the Finding of the Board That Newsboys Engaged in Street Sales of the Los Angeles Times Are Employees.

PART I OF POINT ONE—

MEANING OF THE TERM "SUBSTANTIAL EVIDENCE."

The Findings of the Board Are Conclusive Only When Supported by Substantial Evidence. More Than a Scintilla Is Required. Evidence Sufficient to Create a Suspicion of the Existence of the Fact to be Established Is Not Adequate. Relevant Evidence Reasonably Acceptable as Adequate to Support a Conclusion Must Appear.

1. *National Labor Relations Board v. Columbian Enameling & Stamping Co.*, 306 U. S. 292, 299-300:

"Section 10(e) of the Act provides: '. . . The findings of the Board as to the facts, if supported by evidence, shall be conclusive.' But as has often been pointed out, this as in the case of other findings by administrative bodies, means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred (citing cases). Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. 'It means such relevant evidence as a reasonable

mind might accept as adequate to support a conclusion.' "

Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197, 229;

National Labor Relations Board v. Virginia Electric & Power Co., 314 U. S. 469, 476;

Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board, 301 U. S. 142, 147;

National Labor Relations Board v. Sun Shipbuilding & Dry Dock Co. (3 C. C. A.), 135 F. (2d) 15, 25.

PART II OF POINT ONE—
MEANING OF THE TERM "EMPLOYEE."

1. Respondent's Position.

Throughout this controversy, Respondent has maintained that:

The term "employee" was used by the Congress in the National Labor Relations Act in the ordinary and conventional legal sense as interpreted under the common law and by decisions of federal courts defining the term as used in other cognate social legislation. (Pet. Br. C. C. A. pp. 13, 14.)

2. The Board's Position.

The Board, on the other hand, has maintained that:

"contrary to petitioners' [Respondent here] contentions, common law texts and cases and statutory concepts borrowed from other legislation passed for another purpose are of no assistance in determining the scope of the statutory employment relationship." (Board's Br. C. C. A. p. 39.)

A. THE NATIONAL LABOR RELATIONS ACT CONTAINS NO COMPREHENSIVE DEFINITION OF THE TERMS "EMPLOYER" OR "EMPLOYEE."

(a) *Definitions* (29 U. S. C. A., Sec. 152):

"When used in Sections 151-166 of this Title—

(1) * * *

(2) The term 'employer' includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to Sections 151-163 of Title 45, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the chapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse."

(b) *Rules and Regulations* (29 U. S. C. A., Sec. 156):

"The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of Sections 151-166 of this Title."

B. IN THE ABSENCE IN THE ACT OF COMPREHENSIVE DEFINITION OF THE TERM "EMPLOYEE," COURTS WILL APPLY THE ORDINARY AND CONVENTIONAL MEANING ASCRIBED AT COMMON LAW AND BY THE COURTS TO COGNATE SOCIAL LEGISLATION.

(1) Except as Congress has written into the Act different standards, the federal rules protecting the federal rights created by the Act are fashioned from the common law.

Bailey, Adm'x v. Central Vermont Railway, Inc., 319 U. S. 350, 352:

"The rights which the Act [Federal Employers' Liability] creates are federal rights protected by federal rather than local rules of law (citing authorities). And those federal rules have been largely fashioned from the common law (citing authorities) except as Congress has written into the Act different standards (citing authorities)." (63 S. Ct. 1063-1064.)

(2) The legislative authority uses words in their ordinary sense and with the meaning commonly attributed to them.

Kepner v. United States, 195 U. S. 100, at 124:

"It is a well-settled rule of construction that language used in a statute which has a *settled and well-known meaning, sanctioned by judicial decision*, is presumed to be used in that sense by the legislative body."

United States v. First National Bank, 234 U. S. 245, at 258:

"That this *natural and usual signification* of plain terms is to be adopted as the legislative meaning in the absence of clear showing that something else was meant, is an *elementary* rule of construction frequently recognized and followed in this court."

United States v. Merriam, 263 U. S. 179, at 187:

"The word 'bequest' having the *judicially settled meaning* which we have stated, we must presume it was used in that sense by Congress."

Lynch v. Alworth-Stephens Co., 267 U. S. 364, at 370:

"And the *plain, obvious and rational meaning* of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover."

Von Weise v. Commissioner of Internal Revenue (8 C. C. A.), 69 F. (2d) 439, at 441, certiorari denied 292 U. S. 655:

"One of the cardinal rules for construing statutes is that the words used are to be given their *common ordinary meaning* in the absence of indication in the statute or in the surrounding circumstances to the contrary; but, if a definition of the word is given in the statute, that definition is controlling."

McDonald v. United States (8 C. C. A.), 89 F. (2d) 128, at 133, certiorari denied 301 U. S. 697;

Sanborn v. Commissioner (8 C. C. A.), 88 F. (2d) 134, at 137, certiorari denied 301 U. S. 700;

Hearst Publications, Inc., et al. v. National Labor Relations Board, 136 F. (2d) 608, at 612 [R. 1848].

(3) This presumption must be indulged by the courts.

Levy's Lessee v. M'Cartee, 6 Peters (31 U. S.) 102, 110:

"The legislature *must be presumed* to use words in their *known and ordinary* signification, unless that sense be repelled by the context."

Maillard v. Lawrence, 16 How. (57 U. S.) 251;

Lake County v. Rollins, 130 U. S. 662, at 670-671;

Old Colony R. Co. v. Commissioner, 284 U. S. 552, at 560-561;

Hearst Publications, Inc., et al. v. National Labor Relations Board, 136 F. (2d) 608, at 612 [R. 1848]:

"Since the term 'employee' is not defined in the Act, we agree with petitioners' contention that it must be given its conventional meaning as developed under the common law and statutory enactments."

C. THE CONGRESS DID NOT GIVE A COMPREHENSIVE DEFINITION OF THE TERM EMPLOYEE IN:

1. *Social Security Act,* August 10, 1939, c. 666. Title IX, Section 905(a), 53 Stat. 1400; 42 U. S. C. A., Section 1011(b).

"The term 'employment' means any service of whatever nature performed within the United States by an employee for his employer, except—agricultural * * * domestic, * * *." (8 exceptions.)

2. *Federal Employers' Liability Act,* 53 Stat. 1404, August 11, 1939, c. 685, Section 1; 45 U. S. C. A., Section 51.

"Every common carrier * * * shall be liable in damages to any person suffering injury while he is employed by such carrier * * *."

3. *Fair Labor Standards Act,* 52 Stat. 1060, June 25, 1938, c. 676, Section 3; 29 U. S. C. A., Section 203.

" 'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee * * *.

" 'Employee' includes any individual employed by an employer."

4. *Federal Safety Appliance Act,* March 2, 1893, c. 196 and amendments; 27 Stat. 531; 45 U. S. C. A., Sections 1-46. Apparently an entire absence of definition.

5. *Merchant Marine Act,* 41 Stat. 1007, June 5, 1920, c. 250, Section 33; 46 U. S. C. A., Section 688.

"Any seaman who shall suffer a personal injury in the course of his employment may, at his election, maintain an action for damages at law * * *."

6. *Longshoremen's and Harbor Workers' Compensation Act,* March 4, 1927, c. 509, Section 2, 44 Stat. 1424; 33 U. S. C. A., Section 902.

"The term 'employee' does not include a master or member of a crew of any vessel nor any person engaged * * * to load or unload * * * any small vessel * * *."

"The term 'employer' means an employer any of whose employees are engaged in maritime employment * * *."

7. *National Labor Relations Act,* July 5, 1935, c. 372, Section 2, 49 Stat. 450; 29 U. S. C. A. 152(3).

"The term 'employer' includes any person acting in the interest of an employer directly or indirectly * * *.

"The term 'employee' shall include any employee * * * but shall not include" an agricultural laborer, domestic servant, child or spouse.

D. In Each Instance the Courts Have Declared That Congress Used the Word in Its Ordinary Sense and Intended to Describe the Conventional Relation of Employer and Employee.

1. *Social Security Act.*

Anglim v. Empire Star Mines Co. (9 C. C. A.), 129 F. (2d) 914, 916-917:

"Applying the ordinary legal tests as the statute appears to have intended, the trial court concluded that the Leasers were independent contractors. * * * However, in defining the required relationship * * * the regulations do no more than reiterate the familiar principles of the common law."

Williams v. United States (7 C. C. A.), 126 F. (2d) 129, 132 (certiorari denied, 317 U. S. 655):

"It has been held by this and other courts that employment within the meaning of the statute connotes the legal relationship of employer and employee as those terms were defined and understood at the time of the enactment—furthermore, that an independent contractor is not an employee."

United States v. Griswold (1 C. C. A.), 124 F. (2d) 599, 601:

"We held that an employee is one who meets the test of the more or less established concept of the 'legal relationship of employer and employee.' * * *

"The relationship of employer and employee in the ordinary sense does not exist here."

Deecy Products Co. v. Welch (1 C. C. A.), 124 F. (2d) 592, 597:

"* * * The words 'employ,' 'employer' and 'employee' are to be taken in their ordinary meaning. It seems clear that the question whether a person is an employee in all cases turns on the existence of the more or less established concept of the 'legal relationship of employer and employee.'"

Jones v. Goodson (10 C. C. A.), 121 F. (2d) 176, 180:

"It must be presumed that Congress was cognizant of its well-established principles at the time of the enactment of the statute and that if different guides were intended for ascertaining whether the relationship of employer and employee existed between parties in the application of the statute, appropriate language would have been used to indicate such purpose. There is nothing in the act or its legislative history which indicates such an intent."

Indian Refining Co. v. Dallman (7 C. C. A.), 119 F (2d) 417:

"There is nothing in the Social Security Act which suggests that the terms 'employer' and 'employee' should receive anything but their *ordinary construction.*" (31 F. Supp. 460.)

2. *Federal Employers' Liability Act.*

Robinson v. B. & O. R. R., 237 U. S. 84, 94:

"We are of the opinion that Congress used the words 'employee' and 'employed' in the statute in their *natural* sense, and intended to describe the *conventional* relation of employer and employee."

Hull v. P. & R. Ry. Co., 252 U. S. 475, 479;
Wells Fargo v. Taylor, 254 U. S. 175, 187.

3. *Fair Labor Standards Act.*

Bowman v. Pace Co. (5 C. C. A.), 119 F. (2d) 858, 860:

"The strongly contested issue is whether he was an employee of the Pace Company at all. * * * It is not the purpose of the Fair Labor Standards Act to create new wage liabilities, * * *."

4. *Federal Safety Appliance Act.*

Stevenson v. Lake Terminal R. Co. (6 C. C. A.), 42 F. (2d) 357, 358-359:

"The Congressional failure to define the term 'employee' * * * has evoked a large amount of litigation. * * * and the Supreme Court has held that the term 'employee' in the Employers' Liability Act describes the *conventional* relation of master and servant."

5. *Merchant Marine Act.*

Loe v. Goldstein (9 C. C. A.), 101 F. (2d) 967, 971:

"It is evident that an injured seaman is granted a cause of action by the foregoing section only against one as to whom he occupies the *conventional* relationship of 'employee.'"

6. *Longshoremen's and Harbor Workers' Compensation Act.*

Cardillo v. Mockabee (C. C. A. D. C.), 102 F. (2d) 620, 622:

"There is nothing in the act to destroy the common law meaning of 'independent contractor.'"

7. National Labor Relations Act.

Hearst Publications, Incorporated v. National Labor Relations Board, 136 F. (2d) 608, 611-612 [R. 1843-1852]:

"The Act does not specifically define either the term 'employer' or the term 'employee,' but says simply 'the term "employee" shall include any employee.' Since the Act contains no precise definitions, the publishers contend that Congress intended to use the words in their ordinary and conventional sense as understood at the time the statute was enacted." [R. 1847.]

"Since the term 'employee' is not defined in the Act, we agree with petitioner's contention that it must be given its conventional meaning as developed under the common law and statutory enactments." [R. 1848.]

E. THAT CONGRESS USED THE TERM "EMPLOYEE" IN THE NATIONAL LABOR RELATIONS ACT IN ITS NATURAL AND CONVENTIONAL SENSE IS PERSUASIVELY INDICATED BY (1) LANGUAGE OF THE ACT; (2) RULES AND REGULATIONS IMPLEMENTING NATIONAL LABOR RELATIONS ACT; AND (3) DECISIONS AND ORDERS OF THE NATIONAL LABOR RELATIONS BOARD.

(1) *Language of the Act.*

(a) *Definitions* (29 U. S. C. A., Sec. 152):

"When used in Sections 151-166 of this title—

(1) * * *

(2) The term 'employer' includes any person acting in the interest of an employer directly or indirectly (exclusions then stated) * * *

(3) The term 'employee' shall include any employee and shall not be limited to the employees of a particular employer unless the chapter explicitly states otherwise (inclusions and exclusions then stated) * * *."

(b) *Rules and Regulations* (29 U. S. C. A., Sec. 156):

"The Board shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of Sections 151-166 of this Title."

(2) *Rules and Regulations of Board Implementing National Labor Relations Act.*

(a) *Definitions* (29 U. S. C. A., App. p. 561):

"Sec. 201.1. Terms Defined in Section 2 of the Act. The terms * * * 'employer,' 'employee,' * * * as used herein shall have the meaning set forth in Section 2 of the National Labor Relations Act, * * *."

(3) *Decisions and Orders of the National Labor Relations Board:*

(a) *In the Matter of Houston Chronicle Publishing Co. and Houston Newsboys Union, Local 456*, 28 N. L. R. B. 1043.

Although no specific mention is made in the Board's decision of the interpretation given the term "employee" in the National Labor Relations Act, the recital of the controlling facts of record and the finding of the Board that these facts indicate these "newsboys are not 'employees' within the meaning of the Act"[1] definitely indicates that

[1] *In the Matter of Houston Chronicle Publishing Co.*, 28 N. L. R. B. 1043, 1045, 1046.

the Board was construing the term in its legal, natural and conventional meaning.

The rule of statutory construction applied in interpretation of the term "employee" as used in the National Labor Relations Act should be the same rule applied by this and other federal courts in interpretation of the term as used in other cognate social legislation. That interpretation, as the Ninth Circuit Court of Appeals announced in the instant case, is "based upon a broad policy of public benefit". [R. 1848].

PART III OF POINT ONE—

THE RECORD DISCLOSES NO SUBSTANTIAL EVIDENCE TO SUSTAIN THE FINDING THAT THE NEWSBOYS ARE EMPLOYEES.

Evidence Respecting But 5 of 457 Newsboys Involved Forms Basis of Board's Decision.

The Board found that the newsboys here involved are within the definition of employees as the term is used in the Act [R. 111].

The Regional Director found that there were 457 newsboys engaged in the street sale of the Los Angeles Times eligible to vote at the election [R. 191]. Of these 457 newsboys only 5 were called as witnesses. They were:

Robert Eley [R. 1181-1211];

John Roberts [R. 1211-1243];

Philip Tellis [R. 1243-1249];

John Fields [R. 1249-1280, 1328-1342]; and

Edward Patch [R. 1313-1328].

Upon the testimony of these 5 witnesses must be found, if it may be found, substantial evidence to sustain the Board's finding that the 457 newsboys are employees of the Times.[2]

Excerpts From Board's Decision and Direction of Elections and Evidence Assigned by Board in Support Thereof, Followed by Respondent's Comments and Quotations of Additional Undisputed Testimony by the Same Witnesses on the Same Subjects.

In its decision and direction of elections, the Board declared:

> "On the *basis of the foregoing*, we are of the opinon that the companies have the right to exercise and do exercise such *Control and Direction over the manner and means* in which the newsboys perform their selling activities as establishes the relationship of employer and employee for the purposes of the Act" [R. 108].

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[2]During the hearing, the Chief Trial Examiner at Washington advised the Trial Examiner: "'Evidence should be introduced to show that persons signing cards are employees. Burden is on Petitioner to show this fact. I assume Respondent denies card signers occupy position of employees. If so, evidence should be introduced to show what each individual does.'" [R. 1493.]

Later during the hearing the following colloquy occurred betwgen counsel for the Board and the Trial Examiner:

Mr. Mouritsen: "Let me then understand what the Trial Examiner's idea is on what further evidence should be put in, or the type of evidence."

Trial Examiner Kennedy: "Evidence should be introduced to show what each individual does. Now *I do not think* that has been done." [R. 1513.]

Notwithstanding this direction and admonition, the Board failed to produce any evidence respecting control or direction over any of the 457 Times newsboys other than the 5 above mentioned.

The preceding portion of the decision referred to is under the heading "III. Status of the Newsboys Involved in This Proceeding" [R. 88]. Reference to evidence of control and direction is indiscriminately to any one or all four of the respondent newspapers in the four cases involved. No attempt is made to state a case against any one of the four companies individually. The evidence relied upon to support the finding against the Times we have segregated. It is confined to evidence relating to isolated instances of conduct of or circumstances relating to but 5 of the 457 Times newsboys involved.

We now quote from the Board's findings the evidence (and the Board's comment) upon which the Board made its finding of "control and direction" to establish the relation of employer and employee:

Roy Eley.

1. "Shortly prior to the hearing when the Times changed its press time from 5:00 to 6:00 o'clock Roy Eley's 'order' was *reallocated* without his request by the Times' district manager with the result that Eley received the same number of papers in one delivery that he formerly got in two" [R. 94, 95].

2. Thomas McKinney, Times' district manager, did not deny that he gave the following instructions to Roy Eley, a Times newsboy, when he *first began* selling papers:

Eley related that:

"[McKinney] 'counted out a certain number of papers * * * he told me that there was one of those that was not to be charged to me, that I should leave it at the drugstore in the market, and at the same time I should go up to the liquor store just above there

where there was a certain sale, and over to the little restaurant where there was another certain sale, and then come back to the corner, to work through the market, and get out on the traffic line, in the traffic' " [R. 96, 97].

"When Thomas McKinney, Times district manager, assigned Roy Eley, a Times newsboy, to an off-spot at Fletcher and San Fernando, he was instructed by McKinney, among other things, 'to work until 11 o'clock.' Eley appeared daily at the Times concourse to report to McKinney before proceeding to his spot. Customarily McKinney and other Times district managers transport by automobile Times newsboys from the Times concourse where they report to sell newspapers to spots within their districts.

"Times district managers pay 12 newsboys a small sum each week for providing transportation for other newsboys and the Times makes an allowance to the district manager to cover this expense" [R. 99, 100].

3. "Likewise Roy Eley, a Times newsboy, was transferred from a location in Glendale, California, to another spot by Times' district manager, Thomas McKinney, to enable McKinney to assign to the Glendale spot another newsboy who operated an automobile and who could provide transportation for other Times newsboys traveling from the Times concourse to locations en route to Glendale" [R. 102].

Respondent's Comments on Eley's Testimony.

1. Reallocation of an order (viz., one delivery instead of two) occasioned by a change in press time in no manner supports the finding that the size of a news vendor's order is unilaterally determined by the district man. The maximum size of a newsboy's order will necessarily be restricted by the available supply and competing demands. Such matters are commonplace in our economy, and are vividly illustrated by existing conditions when the manufacturers and suppliers of many commodities are restricting quantities which they will deliver to any particular retail outlet. This restriction is no indication that the retailer is an employee of the manufacturer or retail jobber. Neither Eley nor any Times newsboy testified that the size of his order had ever been unilaterally determined or otherwise controlled by a district man. Eley explained that when the press time was changed from five to six o'clock in order to have complete racing results in the first edition,

> "* * * naturally the order was increased to cover the amount of papers that he had gave me formerly on two deliveries" [R. 1196].

Eley testified that he did not recall ever requesting more papers than were offered him [R. 1196]. He made apparent the reason for this when he said that if he sold out early he would go across the street and get additional copies from another newsboy and that he had never been without papers [R. 1203].

A Times district man (Max Dyer) who serviced a different territory from that in which Eley sold, testified without contradiction that the news vendors tell him how many copies they want and that he gives them the num-

ber requested and never requires them to take more [R. 1289].

2. This excerpt refers to a conversation occurring the first night that Eley sold the Los Angeles Times. Eley admitted he was wholly unfamiliar with his selling location and had to inquire where the location was and how he could get there [R. 1182-1184]. When one undertakes for the first time the sale of a product in a strange location, suggestions by the producer or manufacturer concerning places where sales can best be made and the names of prospective purchasers are not directions as to the manner and means in which the vendor (newsboy here) shall perform selling activities, but more correctly are suggestions calculated to assist in the attainment of a desired result, namely, a greater or increased sale of merchandise. This evidence, referring to one newsboy on his first night of street sales, we believe entirely insufficient to warrant its characterization as evidence of the exercise of such complete control as is necessary to establish the relation of employer and employee.

Eley admitted that after the first night the district man had not given him any directions concerning where he was to sell [R. 1185]. He testified that he exercised his own discretion as to the details of his selling activities. Concerning his sale at a drive-in market, he testified:

> "I would make, oh, as many trips as I deemed desirable through the market, and out on the white line in traffic * * *. I generally used my own judgment on that in this respect. The customers for the market are driving in there constantly to make purchases, and I would try to gauge that so that I could catch a complete change of prospective customers at each time" [R. 1197].

Respecting his sales at a traffic spot, he testified:

"Q. When did you hustle in that spot? A. Well, ordinarily, the traffic is heavy there from the time we first started up until, say, around 9:00 o'clock or 9:30, and at that time, why, I would expend more energies in the traffic line than I would later.

Q. When the customers were there? A. Naturally" [R. 1199].

3. The evidence upon which this finding rests appears at pages 1207-1208 of the transcript of record. On the Times' motion, the testimony was stricken by the Trial Examiner [R. 1208]. The Board affirmed the ruling of the Trial Examiner [R. 80].

John Roberts.

1. "When Frank Curtis, Times' district manager, transferred newsboy Roberts from his original place to a spot across the street where a 'drive-in stand' was located, Roberts was instructed by Curtis '* * * to work traffic and cover this drive-in stand * * * You have got to watch them cars in there every ten or fifteen minutes and make the stands and work your traffic as much as possible * * * Now, it's all right to go in this stand and go in the bar there and flash your papers, but do not blast your headline or anything like that * * * The management objects to that but * * * hold your paper up and give the customers a chance to see the paper. Don't cause any disturbance * * * Go right back to your safety zone'" [R. 97].

2. "Shortly prior to Christmas, 1938, Frank Curtis, Times district manager, removed permanently John A. Roberts, a Times newsboy, from his spot when Curtis decided that Roberts disposed of an insufficient number of newspapers to warrant his re-

tention. According to Roberts, Curtis stated: 'Roberts, I can't use you any more; I am going to have to put somebody on there that will hustle that spot. I have got so many papers to sell and I have got to put somebody on there that will work it better than you are.' Curtis was not a witness" [R. 102].

3. "Times district manager Curtis reprimanded newsboy Roberts because he stopped trying to sell papers during a rainfall, and as we noted above, Curtis discharged Roberts the next day for not hustling" [R. 106].

Respondent's Comments on Roberts' Testimony.

1. The Board failed to observe that Roberts requested the district man to transfer him from another location to the drive-in stand, declaring that it was a better selling site [R. 1218].

2. The explanation of Curtis for refusing to further transact business with Roberts does not support the Board's finding that "Curtis discharged Roberts" [R. 106].[3]

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[3]In the Houston Chronicle case several newsboys testified they had been "fired" by the circulation manager. In commenting on this testimony the Board said:

"* * * it appears that in fact all that had happened is that their papers were given to other newsboys when they had gotten into trouble and been unable to sell them."

28 N. L. R. B. 1043, 1046.

In holding home piece-workers independent contractors under the Social Security Act, it has been said:

"Although the plaintiff has the right not to employ the worker for another piece of work, yet no right exists by which the plaintiff can discharge the worker while the particular contract under which the worker is working is uncompleted."

Kentucky Cottage Industries v. Glenn, 39 F. Supp. 642 (D. C. Ky.).

3. The controversy between the Times district manager Curtis and the newsboy Roberts is disclosed by the testimony of Roberts appearing at page 1222 of the record. It indicates a difference of opinion between these two men respecting the ability or not to sell newspapers at the point in controversy under conditions then existing. There were no orders or directions given and none accepted. There was a termination of the business relationship on the following day, as explained in the immediately preceding comment.

John F. Fields.

1. "John F. Fields, Times newsboy, testified that at the time he 'first started' he was instructed by Bill Moore, Times district manager, to report at the Times concourse at 4:30 daily (except Saturday and Sunday), 2:00 o'clock on Saturday, and 3:00 o'clock on Sunday, and to 'check in' when Moore appeared at approximately 1:00 a. m. Bill Moore was not a witness" [R. 99].

2. "Bill Moore, Times district manager, directed Philip Tellis and John F. Fields not to sell the Examiner" [R. 107].

Respondent's Comments on Fields' Testimony.

1. This instruction as to time and place of issue and delivery of daily and Sunday editions and to time of payment for papers supplied when the newsboy for the first time commences his business transactions with the Times would appear to be the normal procedure, and standing alone the circumstance is consistent with either an independent contractor or an employee status. The Ford Company and General Motors prior to the war had for

years advised their agencies throughout the country, months in advance, time and place of delivery and selling price of new model cars.

2. Fields testified that when he began selling the Times he was told "That there would be an Examiner man working with me on the corner, and that I was to entirely ignore the Examiner altogether. In other words, if the people want an Examiner, don't make any effort to get it. 'You work for the Times'" [R. 1251]. He later testified that for a year and a half preceding the hearing he had been selling, in addition to the Times, the Examiner, the Evening Herald and Express, and a number of weekly and monthly periodicals [R. 1260-1269].

Philip Tellis.

1. "Bill Moore, Times district manager, directed Philip Tellis and John F. Fields not to sell the Examiner" [R. 107].

Respondent's Comments on Tellis' Testimony.

1. Tellis declared he paid no attention to the suggestion that he was supposed to work as an independent merchant, that he considered himself an independent merchant, and bought and sold his papers [R. 1247].

Edward Patch.

1. "Prior to the fall of 1935, the Times paid Edward Patch, a Times newsboy, a weekly bonus, which he received in the form of a Times check in addition to the differential retained by newsboys. Since the fall of 1935 when the Times discontinued the bonus payments, there has been no substantial change in

the Times' mode of operation in the circulation of its newspaper with respect to Patch" [R. 92, Note 21].[4]

Respondent's Comments on Patch's Testimony.

Whatever the effect of the bonus, the condition ceased approximately five years prior to the hearing. The Board's finding that subsequently there was "no substantial change in the Times' mode of operation in the circulation of its newspaper with respect to Patch" is contrary to the evidence. When Patch received a bonus he paid a substantially higher price for the newspaper than he paid after the bonus was discontinued [R. 1319-1322]. After the discontinuance of the bonus, Patch worked different hours than before [R. 1314]. In the absence of the bonus, there is no evidence to sustain the finding that Patch was an employee of the Times. Even the Trial Examiner declared: "I would get from the testimony an indication that the witness is not an employee at the present time" [R. 1328].

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[4]Upon conclusion of the testimony of Patch, counsel for the Times moved that the testimony be stricken. [R. 1327.] In response to the Trial Examiner's question, counsel for the Board and the Trial Examiner then engaged in the following colloquy:

> Mr. Mouritsen: "I think that I would oppose the granting of the motion, Mr. Examiner. I think that it has bearing upon that relationship as it exists at the present time."
>
> Trial Examiner Kennedy: "Well, I am going to deny the motion, but I want to observe that I would get from the testimony an indication that the witness is not an employee at the present time * * * So I think that any evidence that came in under that testimony would tend to establish the company's case rather than the union's case * * * I think it is prejudicial to the union's case. That is what I think." [R. 1327, 1328.]

Respondent's Closing Comment on Testimony of the Five Witnesses.

In each instance these excerpts from the testimony of the 5 newsboys refer to an isolated circumstance. There is no evidence that they are typical of a general practice or of an established custom. They relate to the experience of 5 out of 457 men involved, and not to a general practice or custom even as to these 5, but to isolated events in the experience of each without any intimation of like experience among the other 4. The evidence does not, we believe, establish the status of employer and employee with reference to these 5—certainly it has no evidentiary effect one way or the other with reference to the status of the other 452 men involved.

References by the Board to General or Uniform Practices or Customs (as Distinguished From Isolated Circumstances) Upon Which It May be Contended the Board's Finding Is Predicated.

In addition to the specific instances or isolated circumstances referring to Times newsboys in the subsection previously considered, the Board cited evidence (still relying upon the testimony of the same five Times newsboys) of other circumstances which it may be contended constitute evidence of a general practice or custom. We consider these references.

1. CHECKMEN.

The foundation stone of the Board's finding appears to be the operation of the checkmen [R. 90, 91].

The Times did not employ checkmen [R. 90, Note 18].

2. News Racks and Stands.

The Board found "The companies furnish boxes, racks, change aprons and placards advertising special features contained in the newspaper bearing the name of the publisher" [R. 97-98].

We believe there is no evidence in the record relating to boxes with which the Times was in any manner connected. The uncontradicted testimony of Julius J. Cohen, superintendent of street sales for the Times, is that news racks were obtained originally to service news dealers, that is drug stores, cigar stores and news stands; that occasionally the news racks need repair and are brought to the Times Building for this purpose and newsboys ask for them. They are not required to use them [R. 1171-1172]. The so-called instruction issued in isolated instances to three Times news vendors, viz., Eley, Roberts and Fields, to place newspapers in the racks, was a suggested aid to advertise the paper, thereby enabling the vendor to increase his sales and the publisher to obtain representation for his product.[5]

The news racks were on the street corners when these three newsboys first started selling the Los Angeles Times [R. 1190, 1217, 1252]. Manufacturers are desirous that their product be kept prominently in the public mind. Every drug store and department store contains numer-

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[5]In the *Matter of Federal Ice & Cold Storage Co.*, 18 N. L. R. B. 161, 165, in holding that the circumstance that an ice company painted its name on trucks operated by drivers did not establish the drivers as employees, it was said: "These services amount to no more than aid furnished by a distributor to independent dealers."

ous placards furnished by the manufacturers to the retailer with "instructions" to display them prominently.[6]

The Times newsboy Fields was supplied with a news rack by someone other than the Times [R. 1262].

The evidence is undisputed that there is no requirement that news vendors use change aprons. Some use them, others do not, it is entirely optional with the vendor. Some cut the word "Times" from the apron and retain merely the change pockets. [R. 1173-1174].

3. Requirement That Newsboy Be at His Post at Certain Time.

The Board found:

> "Generally the newsboy is required to be at his post from the time the newspapers customarily appear on the street to the time settlement is made" [R. 98].

The instances relied upon by the Board relating to the Times are again the newsboys Fields and Eley [R. 99]. And in each instance the testimony relates to the first night the newsboys commenced selling the Los Angeles Times. At the time of the hearing there were a minimum of three night and two morning street editions of the Times [R. 1156-1157; 1281]. Whether the news vendor be an independent contractor or an employee, the publisher of the paper is vitally interested in having him

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[6] "Manufacturers of nationally advertised products frequently impose many conditions on the merchants who sell such products. They also are cooperative with the merchant and aid in every way possible the sales of their merchandise." *Indian Refining Co. v. Dallman*, 31 F. Supp. 458; aff'd 119 F. (2d) 417.

at the point of sale and distribution immediately the several editions appear upon the street. The Times newsboy, Fields, declared that since he has a regular downtown location (February, 1939) [R. 1257] due to other work in which he is engaged, he has been late in arriving at his selling location [R. 1340]. The testimony of Eley relates to his individual experience the first night he began selling the Times [R. 1184].

4. Issuance of Extras.

The Board found that the publishers, through their district managers, notified the newsboys in advance of the issuance of an extra and that the newsboys are expected to attend their locations either before or after the usual selling period [R. 98, footnote 24]. There is no evidence in the record to sustain this finding as to the Times. The Board refers to none.

5. Removal and Transfer of Newsboys From One Location to Another.

The Board found "The record is replete with instances in which district managers have removed, permanently or temporarily, newsboys from their corners or transferred them from one location to another, for various reasons" [R. 100].

The Board relies upon the testimony of the Times newsboys, Eley and Roberts.

Respecting Eley, the Board declares:

> "Roy Eley, a Times newsboy, was transferred from a location in Glendale, California, to another spot by Times' district manager, Thomas McKinney, to enable McKinney to assign to the Glendale spot

another newsboy who operated an automobile and who could provide transportation for other Times newsboys traveling from the Times concourse to locations en route to Glendale" [R. 102].

The evidence upon which this finding rests appears at pages 1207-1208 of the record. Upon the Times' motion, the testimony was stricken by the Trial Examiner [R. 1208]. The Board affirmed the ruling of the Trial Examiner [R. 80].

Respecting Roberts, the Board declares:

"* * * Frank Curtis, Times District Manager, removed permanently John A. Roberts, a Times newsboy, from his spot when Curtis decided that Roberts disposed of an insufficient number of newspapers to warrant his retention" [R. 102].

The evidence on the subject is the testimony of Roberts that Curtis stated:

"'Roberts, I can't use you anymore; I am going to have to put somebody on there that will hustle that spot. I have got so many papers to sell and I have got to put somebody on there that will work it better than you are'" [R. 1223].

6. Company Supervision Over the Conduct of Newsboys While They Are Engaged in Street Sales.

The Board found:

"The record also contains evidence with respect to the extent of the Companies' supervision over the conduct of the newsboys while they are engaged in selling newspapers on the street" [R. 103].

No instance of supervision by the Times is cited in the Board's opinion, and we think none may be found in the transcript of record, unless it is concluded that the testimony of removal and transfer of Ely and Roberts (just considered) and the argument between Curtis and Roberts respecting the ability or not to sell papers on the street during rainy periods [R. 1222] are indicative of supervision.

7. Sale of Other Newspapers and Magazines.

The Board found:

> "As a general practice, the newsboys sell more than one newspaper and handle magazines. In certain instances, however, the Companies have objected to the newsboys' handling competing publications * * *. Bill Moore, Times district manger, directed Phillip Tellis and John F. Fields not to sell the Examiner" [R. 106-107].

The testimony of Tellis reads:

> "Q. Now, what did Mr. Moore say to you and what did you say to Mr. Moore? A. Mr. Moore told me that he was building up that spot and that he did not want me to handle the Examiner. It was strictly a Times corner.
>
> Q. In that conversation did he say anything respecting any other publication? A. Not—not at the time, no.
>
> Q. Was that about all of the conversation that you recall? A. Practically all.
>
> Q. And did you act in accordance with what he said to you in that conversation? A. Well, no" [R. 1244].

Tellis also testified:

> "Q. Did you get any salary from the Times? A. No salary. I was supposed to work as an independent merchant. I always considered myself as an independent merchant. Bought my papers and sold." [R. 1247].

Fields testified that for the year and a half preceding the hearing he had been selling the Los Angeles Times, The People's World, Ham and Eggs, Socialist Call, Jewish Forward, The Voice, Wall Street Journal, Evening News, Los Angeles Examiner, Evening Herald and Express, Saturday Evening Post, Look, Collier's and Liberty [R. 1260-1269].

8. Place of Sale; Manner of Display; Discharge and Transfer of Newsboys.

In conclusion the Board found that the Companies

> "supervise the newsboys' selling activities as to such details of performance as the manner of calling, holding, and displaying the newspaper, and place of its sale within the allotted territory. Furthermore, the Companies at will discharge the newsboys, transfer them to other locations, and lay them off as disciplinary measures. * * * Since the relationship contemplates services of an indefinite duration terminable at the will of either party, the newsboy has no vested interest in the newspaper business" [R. 109-110].

There is no evidence that the Times supervised any of the selling activities with respect to "the manner of calling, holding and displaying the newspaper.". The Times restricts the place of sale in the sense that a certain "spot"

or selling location is allotted in the same fashion that a selling territory is allotted to the sales representative of any distributor. That the Times will not continue doing business with the newsboy if he is not successful in making sales does not indicate his status to be an employee. It was so held in *New York Indemnity Co. v. Industrial Accident Commission*, 213 Cal. 43, 1 Pac. (2d) 12.[7] The relationship between the Times and newsboys is not of indefinite duration, as stated by the Board in its finding. The relationship, though brief, is definite; that is, from night to night, or morning to morning, as the selling period may be. Each day the contractual relation is renewed.[8] There is no evidence that the relationship was

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[7] *New York Indemnity Co. v. Industrial Accident Commission*, *supra*, at p. 49.

The Supreme Court of California, in holding that street vendors of two Los Angeles papers were not employees of either newspaper, declared:

> "* * * we are constrained to hold that the limited amount of control which the publishers of these two newspapers undertook to exercise over the newsboys, * * * who daily purchased from their district manager a specified number of copies of their daily issues for a specific sum, payable in cash or at the close of each day's sales, and who undertook the retailing of the same to such customers among the public at large as they were able to attract or procure at specified place and price fixed by the publishers, would not *as a matter* of law be sufficient to constitute such newsboys the employees of the publishers * * *."
>
> 213 Cal. 49; 1 P. (2d) 15.

[8] In holding home piece-workers independent contractors under the Social Security Act, it has been said:

> "Although the plaintiff has the right not to employ the worker for another piece of work, yet no right exists by which the plaintiff can discharge the worker while the particular contract under which the worker is working is uncompleted."
>
> *Kentucky Cottage Industries v. Glenn*, 39 F. Supp. 642 (D. C. Ky.);
>
> *New York Indemnity Co. v. Industrial Accident Commission*, 213 Cal. 43, at 47.

ever terminated during the course of a selling period. The relationship is such that it may not be so terminated. After the Times has sold the newsboy a bundle of papers, the newsboy sells them for cash or on credit, allows them to be destroyed or stolen as he wishes. The Times may refuse to sell him the next day or not as it concludes. It is a day to day contractual relationship.

In the *Houston Chronicle* case, several newsboys testified they had been "fired" by the circulation manager. In commenting on this testimony the Board said:

> "* * * it appears that in fact all that had happened is that their papers were given to other newsboys when they had gotten into trouble and been unable to sell them."
>
> *Matter of Houston Chronicle Publishing Co. v. N. L. R. B.*, 28 N. L. R. B. 1043, 1046.

PART IV OF POINT ONE—

THE RECORD DISCLOSES WITHOUT CONFLICT EVIDENCE OF A SERIES OF GENERAL AND UNIFORM PRACTICES USUALLY AND CUSTOMARILY OCCURRING IN THE TRANSACTION OF THE TIMES AND THE ENTIRE 457 NEWSBOYS ENGAGED IN THE STREET SALE OF THE TIMES, WHICH DEFINITELY ESTABLISH A STATUS INCONSISTENT WITH THAT OF EMPLOYER AND EMPLOYEE.[9]

For the purpose of contrasting the Board's consideration of specific instances or isolated circumstances respecting 5 of the 457 newsboys involved, we now enumerate a series of general and uniform practices customarily attendant upon the business transaction of the Times and the entire 457 newsboys involved. They are:

1. The newsboys are not carried on the Times' payroll [R. 1343].

2. The newsboys receive no money or other thing of value from the Times for selling its newspapers [R. 1294].

3. The newsboys are not registered as employees with the Social Security Board [R. 1344].

4. The newsboys are not covered by Workmen's Compensation Insurance carried by the Los Angeles Times on its employees [R. 1344].

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[9]The Board so held in the *Houston Chronicle Case*, 28 N.L.R.B. 1043, 1046.

5. The newsboys are not employees within the meaning of the term as used in the California Workmen's Compensation Insurance & Safety Act.[10]

6. The Times kept no list of the names of the newsboys selling the Los Angeles Times or the locations where the newsboys make such sales [R. 1149, 1153-1154, 1295-1296].

7. The newsboys take the risk of lost, destroyed or stolen papers or papers sold by them on credit [R. 1194-1195].

8. The newsboys may and as a general practice do sell other local competing newspapers and magazines and periodicals [R. 106—Board Finding].

9. The newsboys purchase the papers from the Times at uniform prices and resell them to their customers at uniform prices, the difference in the purchase and selling price representing the entire profit of the newsboy on the transaction [R. 1195, 1169-1170].

10. Each newsboy is restricted in his operations to a limited area, viz., an "established spot."[11]

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[10]*New York Indemnity Co. v. Industrial Accident Commission*, 213 Cal. 43; *State Compensation Insurance Fund v. Industrial Accident Commission*, 216 Cal. 351.

[11]The Board's Decision and Direction of Election ordered an election among "all newsboys engaged in the street sale of the Times at established spots * * * within Los Angeles and Glendale * * *" [R. 112].

An "established spot" is "a place where a newsboy has engaged in the street sale of the Times, * * * 5 or more days a week for a period of 6 consecutive months or more * * *" [R. 113, 114].

In *Matter of Federal Ice & Cold Storage Co.*, 18 N.L.R.B. 161, 164, drivers of ice trucks were restricted to operating in specified areas. In declaring that the drivers were not employees, the Board said this is a "restriction * * * commonly placed on independent dealers by distributors * * *."

POINT TWO.

There Is No Substantial Evidence to Support the Finding of the Board That the Unit Found by It to Be Appropriate for Collective Bargaining Purposes Is an Appropriate Unit.

DESIGNATION OF UNIT.

The Board found the appropriate unit to be "* * * all newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys; * * *" [R. 115, 341].

UNFAIR LABOR PRACTICE INVOLVED.

The Times was charged with, and found guilty of, unfair labor practices, viz., violations of section 8, subsections (1) and (5) of the Act, in that it refused to bargain collectively with the Newsboys' Union "as the exclusive bargaining representative of its employees who are newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys" [R. 349].

The National Labor Relations Act provides [49 Stat. 449 *et seq.*]:

Section 8 [29 U. S. C. A. 158]:

> "It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in * * * this title.
>
> * * * * * * * * *
>
> (5) To refuse to bargain collectively with the representatives of his employees, * * *"

THE APPROPRIATE UNIT FINDING MUST BE SUPPORTED BY SUBSTANTIAL EVIDENCE.

Unless there is substantial evidence to support the Board's finding of the appropriate unit, the complaint fails. This court has declared:

> "To reach a conclusion upon the complaint under consideration against the company of unfair labor practices * * *, *the validity of the Board's decision as to the appropriate unit must be decided.* As the unfair practice charged was the refusal to bargain collectively because of the inclusion of the Crystal City employees in the unit, if they were improperly included, the complaint fails."
>
> *Pittsburgh Plate Glass Co. v. N. L. R. B.*, 313 U. S. 146, 152.

Under Sections 9(a) and (b) of the Act [29 U. S. C. A. 159] it is provided:

> "(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining * * *."
>
> "(b) The Board shall decide in each case whether, * * * the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

The decision of the Board respecting the appropriate unit may not be an arbitrary or capricious one, but should be manifestly rational.

N. L. R. B. v. Sunshine Mining Co. [C. C. A. 9], 110 F. (2d) 780, 789 (certiorari denied 312 U. S. 678);

Pittsburgh Plate Glass Co. v. N. L. R. B., 313 U. S. 146, 165, 172.

THE REQUIREMENT OF DUE PROCESS IS MET BY THE ACT ONLY BECAUSE THE REVIEWING COURTS HAVE THE POWER, RIGHT AND DUTY TO PROTECT AGAINST ARBITRARY ACTION BY THE BOARD.

N. L. R. B. v. Jones & Laughlin Steel Corp., 301 U. S. 1, 46-47:

> "The procedural provisions of the Act are assailed. But these provisions, as we construe them, do not offend against the constitutional requirements governing the creation and action of administrative bodies. See Interstate Commerce Comm'n. v. Louisville & Nashville R. Co., 227 U. S. 88, 91. The Act establishes standards to which the Board must conform. There must be complaint, notice and hearing. The Board must receive evidence and make findings. The findings as to the facts are to be conclusive, but only if supported by evidence. The order of the Board is subject to review by the designated court, and only when sustained by the court may the order be enforced. Upon that review all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of constitutional right or statutory authority, are open to examination by the Court. We construe the procedural provisions

as affording adequate opportunity to secure judicial protection against arbitrary action in accordance with the well-settled rules applicable to administrative agencies set up by Congress to aid in the enforcement of valid legislation."

Quoted with approval,

Myers v. Bethlehem Shipbuilding Corp., 303 U. S. 41, 49.

SEVERAL GROUPS OF TIMES NEWSBOYS WERE EXCLUDED ARBITRARILY FROM THE BARGAINING UNIT.

In determining the appropriate unit, the Board arbitrarily excluded several groups of Los Angeles Times street vendors. The groups so excluded are

1. All vendors engaged in the street sale of the Times in any city within the metropolitan area outside Los Angeles and Glendale;
2. All vendors engaged in the street sale of the Times at any place within Los Angeles and Glendale other than at established spots;
3. All vendors engaged in the street sale of the Times within Los Angeles and Glendale at established spots for 5 or more days a week, but for less than 4 hours a day;
4. All vendors engaged in the street sale of the Times within Los Angeles and Glendale at established spots for more than 4 hours a day, but for less than 5 days a week;
5. All vendors engaged in the street sale of the Times either within or without Los Angeles and/or Glendale, who are classified as temporary vendors.

These exclusions are not rational. Each is an arbitrary or capricious one. No one is based upon any rational difference in the status of those excluded from those included. No one is based upon any showing that the terms or conditions of sale of the Los Angeles Times to the news vendors included in the unit differed in manner or degree from those of the vendors excluded.

THE METROPOLITAN AREA IS ARBITRARILY DIVIDED INTO CITIES INCLUDED AND CITIES EXCLUDED.

The Los Angeles metropolitan area is clearly portrayed on a map marked "Times' Exhibit B" [R. 186A]. The evidence is without dispute that Times vendors selling the Los Angeles Times within the cities of Beverly Hills, Burbank, Belvedere, South Pasadena, Westwood, and Huntington Park have precisely the same relation with the Times as the street vendors of the Times in Los Angeles and Glendale [R. 1175-1176]. These five municipalities in which the Times news vendors are denied inclusion in the bargaining unit are in each instance contiguous to the territorial boundaries of the City of Los Angeles, and in each instance the territorial limits of the entire municipality excluded is closer to the location of the Los Angeles Times Building and the business district of the City of Los Angeles than large areas of the City of Los Angeles which are embraced within the unit. The Times Exhibit B [R. 186A] discloses that the City of Beverly Hills is entirely surrounded by territory within the City of Los Angeles, and likewise discloses that the Cities of Burbank and South Pasadena have precisely the same territorial relation to the City of Los Angeles as does the City of Glendale. The reason for the arbitrary exclusion of

Los Angeles Times street vendors from the cities above enumerated and the inclusion of such vendors in the City of Glendale is disclosed by the record. We quote from the Board's decision and direction of elections:

"VI. The appropriate units.

* * * * * * * * *

"Although the Companies circulate and distribute their newspapers in suburban areas outside Los Angeles, the Union has organized only the newsboys who sell newspapers within Los Angeles, except in the case of the Times. In addition to the newsboys selling the Times within Los Angeles, the Union has organized the newsboys selling the Times in Glendale, California, a suburb of Los Angeles. *All newsboys engaged in the selling of newspapers in the metropolitan area* of Los Angeles *are eligible to membership in the Union.*

Each of the companies contends that the unit sought by the Union in its respective case is inappropriate because newsboys, having interests similar to those whom the union seeks to represent as exclusive bargaining representative, are excluded.

* * * * * * * * *

Similarly, the Union does not desire to include in the unit the suburban newsboys, other than the Times newsboys in Glendale, California, because *organization has not as yet been extended* to the suburban group generally. Since those whom the Union desires to be included in the unit are, in general, mature individuals who daily rely upon their earnings from the street vending of newspapers as their source of support, since the Union is the only labor organization existing among the newsboys, and *because Union organization has not at present extended* to suburban

newsboys *other than Times newsboys in Glendale*, California, we find the following units, as requested by the Union, to be appropriate for the purposes of collective bargaining:

"(a) * * * * * * * * * *

"(b) * * * * * * * * * *

"(c) All newsboys engaged in the street sale of the Times at established spots 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys; and

"(d) * * * * * * * * * *" [R. 112-115].

Here is the clear pronouncement by the Board that the exclusion of the Times news vendors in cities outside Los Angeles, other than Glendale, is based upon the circumstance that union organization of the Times newsboys has not been extended to such cities.

THE PURPOSE OF THE ACT IS THE PROTECTION OF ALL EMPLOYEES, REGARDLESS OF WHETHER UNIONIZED OR NOT.

Valley Mould & Iron Corp. v. N. L. R. B. [C. C. A. 7], 116 F. (2d) 760, 764 (certiorari denied 313 U. S. 590):

"The act was intended to secure and preserve for employees the right to bargain collectively without intimidation, coercion or other improper influence from anybody, whether it be employer, labor unions or others."

National Labor Relations Board v. National Casket Co. [C. C. A. 2], 107 F. (2d) 992, 997:

"The purpose of the Act is not to compel an employer to hire members of one union rather than another, or union men rather than non-union men."

National Labor Relations Board v. Indiana & Michigan Electric Co., 318 U. S. 9, 19:

> "Their (the organizers') proposition to the Company that it cause the men to join Local B-9 was a proposal to violate the National Labor Relations Act, whose purpose is to protect the workmen from employer pressure and leave them free to choose for themselves whether, and with whom, they will associate."

This court, in considering adequate standards to guide the Board's decision, declared:

> "While the exact limits of the Board's powers or the precise meaning of the terms have not been fully defined, judicially, we know that they lie within the area covered by the words 'employer,' 'plant,' and 'craft' * * * As a standard, the Board must comply, also, with the requirement that the unit selected must be one to effectuate the policy of the act, the policy of efficient collective bargaining. Where the policy of an act is so definitely and elaborately stated, this requirement acts as a permitted measure of delegated authority."[12]

The Newsboys' Union did not seek a craft unit or an industrial unit, or any unit with a history of collective bargaining. It sought and obtained the designation of itself as the representative of a limited group of Times' street vendors excluding other groups operating under

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[12] *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U. S. 146, 165-166.

the same conditions, on the sole ground that the union's organization activities had not extended to the groups excluded.

EXCLUSION WITHIN THE CITY OF LOS ANGELES OF SO-CALLED TEMPORARY NEWSBOYS OR NEWSBOYS SELLING AT STREET CORNERS NOT CLASSIFIED AS ESTABLISHED SPOTS.

There is no evidence upon which these distinctions in street vendors are made. Why a Times street vendor who had not been selling the Times for more than 30 days should be excluded, the record does not disclose. It was upon the testimony of Times *temporary* news vendors relating their experiences of their first night of sale at an *"off-spot"* that the Board's findings against the Times are to some extent predicated.[13] There is no manifestly rational justification in the record for excluding Times vendors who sold at "off-spots" but not at "established spots." If there is justification in the decision and direction of elections, it is found in this language:

> "The union desires to exclude bootjackers, temporary, and part-time newsboys, since they consist largely of school boys who do not depend upon the vending of newspapers for a livelihood, and because of the irregularity of their employment" [R. 114-115].

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[13]Roy Eley [R. 1182-1184], John F. Fields [R. 99].

There is no evidence in the record indicating that newsboys selling the Los Angeles Times are school boys, or that any of the newsboys are immature or do not depend upon the selling of newspapers for their livelihood. The finding of the Board as to the appropriate units of various papers appears to concede that bootjackers, temporary, casual, and part-time newsboys relate to the News and Herald and not to the Times.[14] The evidence at least is all to this effect [R. 857-865].

During the certification hearing an attempt was made to justify the exclusion of temporary newsboys and to justify the use of the term "established spot". This attempt failed dismally. The record discloses conclusively that the use of the term "temporary newsboys" and the term "established spots" was pure guesswork and speculation. The Examiner on motion struck the evidence from the record [R. 1576-1583]. The Times circulation manager later testified that in the Cities of Los Angeles and Glendale the Los Angeles Times was sold by temporary and permanent newsboys at established spots and elsewhere and that he was unable to estimate the respective percentages so sold. [R. 1598.]

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[14]The designation of units reads:

"(a) All full-time newsboys and checkmen who are engaged to sell the News within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys; (b) All full-time newsboys and checkmen who are engaged to sell the Herald within Los Angeles, California, excluding bootjackers, temporary, casual, and part-time newsboys; (c) All newsboys engaged in the street sale of the Times, at established spots, 4 or more hours a day, 5 or more days a week, within Los Angeles and Glendale, California, except temporary newsboys; * * *" [R. 115, 341].

THE ARBITRARY DETERMINATION OF THE UNIT OPERATES TO THE SUBSTANTIAL PREJUDICE OF THE TIMES.

Such arbitrary definition of an appropriate unit will mean that the Times will never know from one day to another which individuals are within and which without the group represented by the Newsboys Union. Reference to the color map [R. 186-A] wil make apparent that negotiations by the Times with the Newsboys Union as the bargaining representative of news vendors in Los Angeles and Glendale only, will either foment discontent and suspicion in the minds of those vendors selling elsewhere or bring about demands by them or other bargaining groups on their behalf. Possibly as each city is organized, application to the Board for certification of representatives will be made. If several groups are designated as bargaining representatives of the newsboys in the nearby cities where the Los Angeles Times is sold, the Times will be obliged to bargain with many units instead of one. The units will be competing one against the other and perhaps even seeking to augment membership at the expense of a rival unit. Rather than tending to create industrial peace and harmony, the Board's decision tends to create the opposite result. It readily may be foretold that discontent and strife rather than harmonious industrial relations will be engendered if this arbitrary and capricious unit is finally determined to be an appropriate one to represent newsboys engaged in the street sale of Los Angeles Times. In accepting the Union's desire that newsboys operating in union organized areas be included and newsboys operating in areas not yet union organized be excluded, the Board ignored factors it ordinarily considers in determining the appropriateness of a unit.[15]

[15] *Pittsburgh Plate Glass Co. v. N. L. R. B.*, 313 U. S. 146, 153

POINT THREE.

It Is Within the Power of the Court to Examine the Record for the Purpose of Determining Whether There Is Substantial Evidence to Sustain the Board's Finding That Newsboys Engaged in Street Sales of the Los Angeles Times Are Its Employees and That the Unit Appropriate for Collective Bargaining Purposes Consists of Those Newsboys Defined in the Board's Decision and Direction of Elections.

INTERPRETATION OF STATUTES AS APPLIED TO JUSTICIABLE CONTROVERSIES IS A JUDICIAL FUNCTION.

U. S. v. American Trucking Associations, 310 U. S. 534, 544:

"The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function."

THE BOARD'S FINDINGS ARE CONCLUSIVE ONLY WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE.

N. L. R. B. v. Columbian Enameling and Stamping Co., 306 U. S. 292, 299;

N. L. R. B. v. Southern Bell Tel. and Tel. Co., 319 U. S. 50, 51.

"On this certiorari the question is whether the order of the Board herein is supported by substantial evidence."

There is nothing to the contrary in the line of authorities relied upon by petitioner, viz.:

1. *Gray v. Powell,* 314 U. S. 402;
2. *Sunshine Anthracite Coal Co. v. Adkins,* 310 U. S. 381;
3. *South Chicago Coal and Dock Co. v. Bassett,* 309 U. S. 251;
4. *Rochester Tel. Corp. v. United States,* 307 U. S. 125;
5. *Shields v. Utah Idaho Central R. Co.,* 305 U. S. 177.

Gray v. Powell, supra, the latest decision, is typical. In that case the Bituminous Coal Act of 1937 (15 U. S. C. A., Secs. 828 *et seq.*) was under consideration. Section 4-A of the Act set up machinery for obtaining exemptions. An application by the receivers of a railway company for exemption was denied. Following review of the order and reversal by the Circuit Court of Appeals (*Powell v. Gray,* 114 F. (2d) 752) this court granted certiorari (311 U. S. 644). The judgment of the Circuit Court of Appeals was reversed.

This court, after quoting section 4-A, declared:

> "In a matter left specifically by Congress to the determination of an administrative body, as the question of exemption was here by Sections 4-II(1) and 4-A, the function of review placed upon the courts by Section 6(b) is fully performed when they determine that there has been a fair hearing, with notice and an opportunity to present the circumstances and arguments to the decisive body, and an application of the statute in a just and reasoned manner. * * *

"Such a determination as is here involved belongs to the usual administrative routine. *Congress, which could have legislated specifically as to the individual exemptions from the code, found it more efficient to delegate that function* to those whose experience in a particular field gave promise of a better informed, more equitable, adjustment of the conflicting interests of price stabilization upon the one hand and producer consumption upon the other."

314 U. S. 411-412.

Continuing, the court said:

"Just as in the *Adkins* case (310 U. S. 381) the determination of the sweep of the term 'bituminous coal' was for this same administrative agency, so here there must be left to it, subject to the basic prerequisites of lawful adjudication, the determination of 'producer.'"

314 U. S. 412-413.

There is not in the National Labor Relations Act any comparable delegation of power such as appears in the Bituminous Coal Act of 1937. The Circuit Court of Appeals of the Ninth Circuit correctly disposed of the Board's contention in this particular when it announced:

"The rule that an administrative application of a general statute is conclusive unless arbitrary, *Gray v. Powell*, 314 U. S. 402, 411; *Sunshine Coal Co. v. Adkins*, 310 U. S. 381, 399; *Shields v. Utah Idaho Central R. Co.*, 305 U. S. 177, is not applicable to the situation under consideration. *Contrary to the cases cited, there is no delegation to an administrative body of power to determine whether the facts are within a specified exception to a statute*, the exercise of which

power involves an interpretation of terms. Rather does the instant case fall within the general rule that 'the interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function.' *United States v. American Trucking Ass'ns., Inc.*, 310 U. S. 534, 544." [R. 1848; 136 F. (2d) 612.]

An excerpt from recent decision of the Circuit Court of Appeals of the Fifth Circuit we believe is helpful.

> "It is within the province of the court to determine whether or not words spoken and actions taken amount, as a matter of law, to unfair labor practices under Section 8 of the Act. It is the province of the Board to determine whether words were spoken or acts were done. *However, the legal effect of the words spoken or acts done, and a determination of whether or not they amounted to a violation of the Act, may be a legal question and within the power of the court to determine.* It is also within the power of the court to determine whether or not there is a total lack of evidence on which any particular finding could be predicated."
>
> *Jacksonville Paper Co. v. National Labor Relations Board* (5 C. C. A.), 137 F. (2d) 148, at 150. (Certiorari denied October 18, 1943, 64 S. Ct. 84.)

Conclusion.

In the Board's Brief,[16] despite extended discussion and argument respecting the scope of the Act and the binding effect upon the courts of the Board's decision, it appears to be admitted that *unless the findings are supported by substantial evidence* they are not binding upon the courts. This is precisely what we have contended.[17] We quote the following excerpts from the Board's Brief:

> "The determination of the administrative body must have *'warrant in the record'* (*Rochester Telephone Corp. v. United States*, 307 U. S. 125, 146) and a reasonable basis in the law. Just as an administrative decision which is *unsupported by substantial evidence* has no rational basis in fact, so, too, an administrative ruling which is plainly unreasonable in the light of express statutory language or other convincing evidence of legislative intention has no foundation in law. For *either vice* administrative action may be set aside" [Board's Br. pp. 56 and 57].

> "The Board's determination of the existence of an employment relationship, if not arbitrary and *supported by the evidence*,[18] is conclusive" [Board's Br. p. 28].

> "Having shown that the Act does not merely echo a common law test of master and servant * * * we urge, first, that the question of coverage was for

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[16]The Board's Brief which we have before us is a 104 page document, received January 19, 1944. The covering letter explains that changes are anticipated before final printing and filing and that in the final document the pagination will differ from the copy presently in our hands. Of necessity we are compelled to refer to the copy now before us.

[17]*Ante* Point One, Part III, pages 22 *et seq.*

the determination of the Board * * *, and that the court below should have upheld the Board's determination since it was not arbitrary and *was supported by substantial evidence.* * * *" [Board's Br. pp. 50 and 51].

"In each of the cases cited, this Court recognized that the question as to whether particular facts brought a person within statutory language was a matter of judgment on which the decision of the administrative official was to be accepted, *if supported by evidence*[18] in the record, * * *" [Board's Br. p. 52].

"The Board's determination of the employment relationship will not be reviewed *de novo* by the courts, attempting to apply a 'fact'—'law' yardstick, but will be sustained if reasonable and *supported by the evidence*"[18] [Board's Br. pp. 95 and 96].

The court below decided that the findings of the Board are not supported by substantial evidence. The precise language of the opinion reads:

"The question for decision as to each newspaper separate from any other paper is *whether there is substantial evidence* * * * to support the Board's decision that they were employees under Section 2 (3) of the National Labor Relations Act" [R. 1849-1850].

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[18] "But as has often been pointed out, this, as in the case of other findings by administrative bodies, means evidence which is substantial * * *."

N. L. R. B. v. Columbian Enameling and Stamping Company, 306 U. S. 292, 299.

> "* * * we believe * * * that *there is no substantial evidence* herein to support the Board's determination that the newsboys are 'employees' of the publishers * * *" [R. 1850].
>
> "We think the Board is *not supported by substantial evidence* in its finding that the 'newsboys' are employees of the publisher whose newspaper they vend" [R. 1851].

The foregoing excerpts from the opinion persuasively indicate that the lower court did not indulge in a *"de novo* judicial review" of the record as the Board contends [Board's Br. pp. 2, 50, and 96].

The Board's Brief is given over largely to the contention that a proper interpretation of the terms "employer" and "employee" as they appear in the Act are not synonymous with the common law terms "master" and "servant." In fact the opening statement of Point One of the Board's Summary of Argument reads:

> "The common law of master and servant does not define the employment relationship under the Act. This court has recognized that the term 'employees' is not a word of art but varies in meaning from statute to statute depending upon the context in which it is used" [Board's Br. p. 27].

We have not contended that the common law definition of master and servant controls, nor that the term "employee" is a word of art. Neither contention may be found in any of our briefs. As stated heretofore [*ante* p. 10] throughout we have contended that "The term 'employee' was used by the Congress in the National Labor Relations Act in the ordinary and conventional legal sense

as interpreted under the common law and by decisions of federal courts defining the term as used in other cognate social legislation."

Before the Circuit Court of Appeals the Board stated its position as follows [*ante* p. 10]:

> "Contrary to petitioners' [respondent herein] contentions, common law texts and cases and statutory concepts borrowed from other legislation passed for another purpose are of no assistance in determining the scope of the statutory employment relationship."

Presently before this Court the Board states its position as follows:

> "The court below ignored the distinctive purpose and policy of the National Labor Relations Act and equated the definition of employment in Section 2 (3) of the Act solely with the common law of master and servant. We believe that not only the purpose and policy of the Act but also its plain language furnish the basis for a distinctive and broad definition of employment and that neither the common law nor definitions contained in other statutes limit the reach of the Act" [Board's Br. p. 34].

There is a further declaration in the Board's Brief to the effect that the lower court is imposing "upon the Board a strait-jacket concept of employment" [Board's Br. p. 68]. The authors of the Board's Brief are not unaware that their contentions in this respect are not borne out by the language of the lower court's opinion for in recognition of the position taken by the lower court counsel for the Board concede:

> "Although the court below *paid lip service* to the fact that it was dealing with legislation 'based upon

a broad policy of public benefit' [R. 1848], it selected from among conflicting formulations of the common law one which states the test most rigidly: 'the control referred to must be complete control of the means and methods of performance' [R. 1849]" [Board's Br. p. 89, note 5].

The language of the opinion of the Circuit Court of Appeals referred to reads:

"Since the term 'employee' is not defined in the Act, we agree with petitioners' contention that it must be given its conventional meaning as developed under the common law and statutory enactments.

* * * * * * * *

"The term 'employee' has been interpreted under several federal statutes, other than the National Labor Relations Act, in like manner based upon a broad policy of public benefit" [R. 1848].

"In determining status as between employee and independent contractor the basic inquiry is where the right to control lies, and the control referred to must be complete control of the means and methods of performance" [R. 1849].

For us it is not easy to understand the Board's position with reference to the definition of the term "employee." Before this court the Board takes the position

"that the application of this term is peculiarly *a matter of labor relations* rather than *a matter of statutory construction*" [Board's Br. p. 30].

"* * * its interpretation and application are matters of *labor relations* rather than of *statutory construction*" [Board's Br. p. 77].

Elsewhere in the Board's Brief are found these expressions:

> "* * * the broad test of coverage under the Act is, then, the collective bargaining concept" [Board's Br. p. 35].
>
> "The language of the Act not only embraces all those to whom the collective bargaining concept may appropriately be applied but fixes a standard of coverage which differs from the scope of the common law master and servant relationship" [Board's Br. p. 39].

To the same effect are statements appearing at pages 40, 62, and 64 of the Board's Brief. This further statement of the Board's position is encountered:

> "The whole body of administrative decisions of the Board which now fill 54 volumes is based on this *sui generis* concept of the employee relationship. This concept is one not generally familiar to the courts but well known to experts in labor relations. Confusion would result were the courts now to impose upon the Board a strait-jacket concept of employment" [Board's Br. p. 68].

We have heretofore in this brief, Point One, Part II, Subdivisions B, C, and D (*ante*, pp. 12-20), referred to acts of Congress (including among others the Social Security Act and the Fair Labor Standards Act) of a purpose like unto the National Labor Relations Act and to decisions of this court and of the several Circuit Courts of Appeals construing these acts, which decisions would indicate that the courts are not unfamiliar with the in-

terpretation to be placed upon the term "employee." It is a sad commentary on our federal courts to intimate, if not specifically declare, that they are not familiar generally with the concept of the term "employee" as it may appear in the numerous congressional acts that have come before them for consideration and interpretation.

Just how do counsel for the Board reconcile their foregoing statement with the prayer in the Board's Petition for Writ of Certiorari, reading as follows:

> "It is important both in the interpretation of the National Labor Relations Act and of such legislation as the Social Security Act and the Fair Labor Standards Act that the lower courts be advised whether 'employee' is to be interpreted in an enlightened manner which gives effect to the realities of economic relationships and the power of the employer or is to be given a narrow construction such as the court below applied in the case at bar" (Pet. for Cert., p. 25).

Recently in a National Labor Relations Board case[19] the Circuit Court of Appeals for the Second Circuit, although conceding that for practical purposes the decision of the Board is final upon those issues as to which it must be assumed to have the competence born of its special acquaintance with labor relations, such as the extent and persistence of an employer's influence upon a succeeding company union, nevertheless examined the record and concluded that the evidence failed to sustain the Board's find-

---

[19] *National Labor Relations Board v. Dadourian Export Co.*, 138 F. (2d) 891.

ing that the employer unlawfully refused to bargain collectively with the union representative of the employees. In the course of its opinion the court declared:

> "We do not forget the latitude which we must accord to all the Board's findings. In National Labor Relations Board v. Standard Oil Company, 138 F. 2d 885, we have just decided that upon those issues as to which it must be assumed to have a competence, born of its specialized acquaintance with labor relations—such as the extent and persistence of an employer's influence upon a succeeding company union—it is for practical purposes supreme. If this is such an issue, it should be supreme here as well; but it seems to us that to say so *would reduce the review which the statute indubitably gives to courts to shadow and simulacrum.* It would be fantastic, we think, to say that only those versed in labor relations are competent to determine the meaning of such language as that we have quoted, because it was addressed to employees. As we have said, the Board might have refused to believe the witnesses at all, but if it did not, the issue involves a construction of the law: i. e., the scope of the right to choose representatives. Nothing in the books suggests that in the end the courts have not that responsibility."
>
> 138 F. (2d) 892-893.

Elsewhere in the Board's Brief [p. 69] we find this statement:

> "The versatile administrative connotations of and refinements in the term 'employee' which the Board has developed in connection with Section 9 emphasize the fact that this is a subject matter peculiarly appropriate to the exercise of administrative discretion."

Then follows a series of references to Board decisions. These references we think rather definitely indicate in most, if not all, instances that the conventional interpretation of the term "employee" is adopted by the Board. For illustration (now referring to the Board's Brief):

1. Whether those who work for a contractor are the employees of the primary employer and are to be grouped with other employees of the primary employer for bargaining purposes [Board's Br. p. 69];

2. Grouping in an appropriate bargaining unit employees of interrelated companies and of competing companies [Board's Br. p. 70];

3. Determining whether extra and irregular employees should be granted the same bargaining rights as full-time employees [Board's Br. pp. 71-72];

4. In deciding whether striking employees and employees replacing strikers are entitled to vote [Board's Br. p. 73];

5. In deciding that laid off employees have a sufficient expectancy of return to employment and that employees discriminatorily discharged are entitled to vote [Board's Br. pp. 73-74];

6. In determining status of temporary employees, relief employees, part-time employees, and intermittent and casual employees [Board's Br. p. 75].

The Board in each instance is dealing with employees in the sense in which we contend the term is used in the Act.

The Board's Brief gives no consideration to the appropriateness of the bargaining unit designated other than to say [p. 26, note 23] that the court failed to pass upon

the respondent's claim that "the unit found by the Board was inappropriate for collective bargaining purposes."

The Board's position, based upon its interpretation of the line of cases of which *Gray v. Powell*, 314 U. S. 403, is typical, may or may not be consistent with the Board's repeated declaration that its findings are conclusive *if supported by substantial evidence*. Beginning this conclusion (*ante*, pp. 59-61) we quoted a number of the Board's statements declaring that substantial evidence to sustain the finding is essential. We believe that the language of this court in *N. L. R. B. v. Columbian Enameling and Stamping Co.*, 306 U. S. 292, 299, and *N. L. R. B. v. Southern Bell Tel. & Tel. Co.*, 319 U. S. 50, 51, is definitely to the same effect.

There is not substantial evidence in the record to sustain the court's finding either: (first) that newsboys engaged in street sales of the Los Angeles Times are its employees or (second) that the unit appropriate for collective bargaining purposes consists of those newsboys defined in the Board's decision and Direction of Elections. The Circuit Court of Appeals correctly decided the first of these contentions and accordingly its judgment should be affirmed.

Respectfully submitted,

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Nos. 336-339

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

NATIONAL LABOR RELATIONS BOARD,
Petitioner
v.
HEARST PUBLICATIONS, Incorporated

NATIONAL LABOR RELATIONS BOARD,
Petitioner
v.
STOCKHOLDERS PUBLISHING COMPANY, Inc.

NATIONAL LABOR RELATIONS BOARD,
Petitioner
v.
HEARST PUBLICATIONS, Incorporated

NATIONAL LABOR RELATIONS BOARD,
Petitioner
v.
THE TIMES-MIRROR COMPANY

On Writs of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF FOR THE INTERNATIONAL PRINTING PRESSMEN & ASSISTANTS' UNION OF NORTH AMERICA, AMERICAN FEDERATION OF LABOR, AMICUS CURIAE

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MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The International Printing Pressmen & Assistants' Union of North America, organized October 8, 1889 (hereinafter termed the "International") is a labor union affiliated with the American Federation of Labor.

Pursuant to the provisions of Rule 27 (9) of the Rules of this Court, the International made application to all the parties to the within cases for their written consent to the filing of a brief *amicus curiae* herein.

The Solicitor General, on behalf of the National Labor Relations Board, gave his consent.

All four parties respondent have refused their consent.

The International, since June, 1912, has been awarded exclusive jurisdiction under the Federation to charter subordinate unions of newsboys, carriers or other persons engaged in the single-copy distribution of newspapers.

Special reasons for the granting of this motion are contained in the accompanying brief.

BRIEF FOR INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA, AMICUS CURIAE

INTEREST OF PARTY FILING THIS BRIEF

The question in these cases—whether the newsboys reasonably may be found to be employees of newspaper publishers within the meaning of the labor laws—is, we believe, one of first impression in the courts of the United States. The Board has uniformly found the requisite status to exist (except in one case, where the newspaper maintained no street circulation department) yet this is the only instance where resort was had to the courts. The issue here, if determined adversely to the newsboys, will sweep away a bargaining structure imbedded in this area of the labor movement and there recognized and developed for more than a generation. Such a result would fasten on these men (generically termed "newsboys") all the disadvantages of the labor status with none of the advantages of the independent merchant status, nullify their past gains, and deprive them of the only protection appropriate to their actual condition.

The International has been affiliated with the American Federation of Labor since 1889. In 1912, the International was first granted exclusive power under the Federation to charter newsboys', carriers' and similar unions, and since that time many such unions have become affiliated with it as subordinate unions. A list of those unions within the continental United States, certified by International President George L. Berry, and derived from the

Official Directory of the International, dated October 16, 1942,[1] is made a part of this Brief and attached hereto as Appendix "A".

The newsboys in these unions are adult workers with habits of discipline and responsibility. To be eligible for membership they must be at least eighteen years old. They have a long history of collective bargaining and contractual relations with publishers. Since it is the policy of the International not to claim jurisdiction over any union unless the suggestion of affiliation comes from the union itself, there are several similar unions that are affiliated directly with the American Federation of Labor as Federal labor unions. A list of those unions, certified by President William Green of the American Federation of Labor, and derived from the official records of the Federation, is also made a part of this brief, as Appendix "B".

Similar unions are also either affiliated directly with the Congress of Industrial Organizations, or are a component part of international or local unions chartered by the Congress.

Other similar unions are "independent", that is, are not affiliated with any other local, international or national labor or other organization. The facts relative to those unions do not appear to be available from any official source so far as we have been able to determine.

The ruling of this Court in the cases at bar will determine the right of the members of all these newsboys' unions to the protection of the labor laws under the national policy enunciated by and implicit in the Act.

---

[1] Several other newsboys' unions have been chartered by the International since this date.

LABOR ORGANIZATION AND RELATIONS

(a) Organization

The Constitution and By-Laws granted to the International by the American Federation of Labor, as revised and adopted June, 1912,[2] is the first which granted exclusive jurisdiction to the International over subordinate unions of newsboys, carriers or other such organizations. Every succeeding constitution of the International,[3] through the present Constitution, revised and adopted September, 1940, contains a similar provision regarding newsboys' unions.

The organization of newsboys in labor unions is not new. It dates from the growth of large-scale newspaper advertising and the consequent development in the rapid single-copy newspaper street dissemination of news, spurred by the immense sums derived from advertising revenues, as measured by and dependent on circulation. As in other areas of labor organization, it has been a spontaneous and nation-wide movement resulting, among other things, from the grave inequalities inherent in the employer-employee relationship where collective bargaining is impossible. The inception and growth of these unions have been the product of the conditions which brought them into

---

[2] The pertinent provision of the Constitution of 1912 was as follows: "Article I, Sec. 2. The jurisdiction of this International Union shall embrace the entire continent of North America, and in it alone is vested the power to charter, regulate and control subordinate unions of Printing Pressmen, Assistants, Rollermakers, Newsboys, Carriers and such other organizations not chartered by an International Union."

[3] These Constitutions were adopted and approved in June 1913; June, 1914; June, 1916; October, 1920; September, 1922; August, 1926; August, 1928; July, 1933 (adopted by referendum in February, 1929); and September, 1940.

being and the necessities of the social structure which dictated their continuance. No one sat down in isolation and decided it would be a good idea to have newsboys' unions throughout the United States. The exigencies and peculiarities of the newspaper industry and the place of the street newsboy therein caused the creation of those unions, organized by different persons at different times and in different parts of the country.

(b) Labor Contracts and Relations

The pattern of collective bargaining between newsboys on the one hand and publishers on the other has evolved and been maintained over many years. Many contracts have resulted from collective bargaining, and the terms of those contracts are substantially those rendered familiar by labor contracts in the newspaper and other industries.

These contracts have been pivotal in creating that industrial peace it was the policy of the Act to establish and maintain. The main terms of several such contracts in effect on October 1, 1942, derived from official records[4] of the International, are reprinted in this brief as Appendix "C".

A contract between the Cleveland Newspaper Venders' Union (an independent union organized in the spring of 1934), and The Scripps Publishing Company, The Plain Dealer Publishing Company and The Cleveland Company, is made a part hereof as Appendix "D". The contract

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[4] "Newspaper Minimum Wage Scales, Hours and Working Conditions of Subordinate Unions of the International Printing Pressmen and Assistants' Union of North America."

was a continuation of a one-year contract made in June, 1934, between the same parties, after a newsboys' strike against the three publishers. On the expiration of that contract a new two-year contract was entered into with the publishers.

This last Cleveland contract (Appendix "D") expired in June, 1940 and was not renewed when the Cleveland newsboys went out on strike after the publishers refused to recognize the union as bargaining agent for home delivery carriers. The strike is described in the June 22nd, 1940, issue of Editor & Publisher as "probably the largest of its kind".[5] It was attended by considerable violence. The June 19th, 1940, issue of Editor & Publisher states that "more than sixty persons" were arrested "on charges of malicious destruction and disorderly conduct". The publishers won the strike; the independent newsboys' union, after many months, disbanded. Rather full reports of the strike are contained in the June 22nd and September 4th, 1940, issues of Editor & Publisher. Those reports are reprinted herein as Appendix "F".

A contract of the Seattle Newsboys' Union No. 15834, A. F. L., with the major Seattle publishers is made a part hereof as Appendix "E". The contract was for a term of three years from July 1st, 1937,[6] and is reprinted from the November, 1940, issue of the American Federationist, the official organ of the American Federation of Labor.

The present contract of the Philadelphia Newspaper

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[5] Appendix "F", p. 40a.

[6] The contract was subsequently renewed for five years from its expiration date for a further period of five years.

Carriers' Union, Local No. 20442, A. F. L.,[7] and the major Philadelphia publishers is made a part hereof as Appendix "G". This was a four-year contract[8] beginning May 9, 1939. There has been no written renewal of this contract, although some verbal alterations have been made since May 9, 1943.

Since the reversal of the Order of the Board in the present cases by the Circuit Court of Appeals, many publishers have declined to bargain with the unions.

The Philadelphia Newscarriers' Union, Local No. 504, of the International, filed petitions for certification and investigation pursuant to Section 9 (c) of the Act with the Fourth Regional Office of the National Labor Relations Board, in Philadelphia. These petitions have been withdrawn, without prejudice, pending the decision of this Court in the cases at bar.

In 1941 a so-called "newsdealers' " union, holding a Federal charter from the American Federation of Labor, went out on a "wild-cat" strike against the major New York publishers. A temporary injunction,[9] issued by Jus-

---

[7]This Union became affiliated with the International in March, 1942, and is now the Philadelphia Newsboys' Union, Local No. 473, of the International.

[8]In addition to the wage and expense provisions, a noteworthy feature of this contract is an agreement for the filling of open corners by the union on a preferential basis. The Board properly notes in its brief that the problem of regularizing hiring practices implicit in the so-called "sale" of corners involved in these cases is a matter for collective bargaining. There can of course be no "sale" of public sidewalks, and the jealously guarded, absolute and freely exercised right of the publishers to "cut off" papers makes any such practice illusory. The power to "cut off" papers is the power to discharge and in practice is so used.

[9]*People vs. Masiello*, 177 Misc. 608, 31 N. Y. S. (2) 512 (Sup. Ct. 1941).

tice Koch of the Supreme Court of New York, put an end to the strike and to the union.[10] The union's charter was suspended by the American Federation of Labor shortly thereafter.

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[10] In the *Masiello* case the question of employer-employee relationship within the meaning of the Act, or for any other purpose, was not presented at all. On motion made in the name of the people of the state of New York, and on motion of its Attorney General, a temporary injunction was granted, on the theory that the action of the so-called newsdealers (comprised among others, of large distributors and storekeepers, who sold cigarettes, candy, etc., and owned or rented *private property* used in their commercial activity in joining in common action against a majority of the New York newspaper publishers, constituted an illegal monopoly under a local anti-trust law.

Even though the question of an employer-employee relationship was not litigated at all; that the persons involved were storekeepers in large measure, and that the case was heard before a single justice on a motion for a temporary injunction and *has not yet been ordered down by the plaintiff for final hearing*, the ruling has been severely criticized:

> ["In the Masiello case] the publishers prescribe the place where the newsdealer is to set up his stand, the number of papers he can sell, how the papers are to be arranged on the stand, and the price at which the papers are to be sold. These practices are characteristic of the employer-employe relationship, and to deny the newsdealers the benefits of anti-injunction legislation may deprive them of the only economic weapons appropriate to their status * * *.
>
> "According to the law [of New York City] as it now stands, groups of independents are read out of the statutes though the use of a criterion borrowed from the law of agency and designed for tort, contract and workmen's compensation cases. Formal relations and doubtful analogy should not be brought in to control the decision of cases of this kind in the labor field." *Judicial Restrictions on Peaceful Picketing by "Non-labor" Groups*, 51 Yale Law Journal 1039 at 1040, 1041.

Argument

After the strike had thus failed and the charter of the Federal labor union had been suspended, the New York Newsboys' Union, Local No. 471, was chartered by the International in June, 1942. That union has not yet been recognized by any of the New York publishers, the refusal of several of them being predicated solely upon their stated fear of reprisals if they should bargain with the union. They refer to the *Masiello* case as a basis for their apprehension. Petitions for investigation and certification pursuant to Section 9 (c) of the Act having been filed with the Second Regional Office of the National Labor Relations Board in New York, the petitions were thereafter withdrawn, without prejudice, at the suggestion of the Regional Office, pending the disposition by this Court of the present cases.

The pattern of concerted activity which characterizes "employees" generally was well developed among newsboys at the time the National Labor Relations Act was passed. As long ago as 1912, when the pressmen in Chicago were "locked out"[11] for a time, the newsboys, together with several other crafts, went out on strike. A contemporary comment appears in The American Pressman, trade journal and official publication of the International:

> "The rank and file's attention is called to the fact that in sympathy with us in Chicago the Stereotypers, the Machinists, Newsboys, Carriers and Drivers are upon the streets endeavoring by joint alliance to defeat the publishers' proposition in driving our unions from the newspaper industry. Our International

[11] *Imperial Hearst*, Ferdinand Lundberg (Modern Library Edition) pp. 156, 161, 167-9, 194, 195.

Union has accepted their support and in turn we are required to give them financial assistance and the fullest consideration for their loyalty to the trades union movement. I urge the rank and file of our membership to consider this splendid loyalty upon the part of these two thousand men of other trades that have withdrawn from their work in Chicago in order that they might be of some assistance to us in promoting our campaign. We cannot, in justice to their cooperation, in justice to trades unionism, or in justice to humanity, hesitate one second in the support of which those men are so deserving."

The President's Letter, "The American Pressman", Volume 22 (1912), page 329.

"* * * we have made it necessary that this class of unskilled workers be recognized as well as organized, and it is to be hoped and reasonably expected that in the future we may see a well organized union of newsboys throughout the country joining together with the present international unions in the work of improving the economic and social conditions of all, irrespective of their vocation."

The President's Letter, *The American Pressman*, Volume 24 (1913), page 39.

This long record of hostility[12] to organization of and negotiation and contracting with unions of newsboys is clearly neither an isolated phenomenon, nor of recent origin.

That the newsboys' relationship to the publishers gives rise to economic problems indistinguishable from those of any other labor group is seen most directly by an Order, dated February 27, 1943, of the Newspaper Ad-

[12] See *Imperial Hearst*, *supra*, at pp. 161, 195, 300.

visory Panel of the War Labor Board providing in part that:

> "For the purpose of this order the daily newspaper industry printing and publishing panel shall advise the board as to wage and salary rates involving employes in the following departments of daily newspaper printing and publishing establishments: mechanical, maintenance, mailing, editorial, art, circulation (including newsboys), and commercial and kindred department." (Editor & Publisher, February 27, 1943, page 5.)

The Order of the Board made in these cases is based not on empty formalisms, but on a recognition of the realities inherent in and peculiar to the dissemination of news and advertising to the public directly, by means of newsboys, on the streets of Los Angeles. The administrative judgment of the Board, derived from its expertise in this field, and informed by its experience, was exercised in making an Order which was intended to and would, it is submitted, effectuate the purpose of the Act in this field and within the limits of the jurisdiction conferred upon the Board by the Congress.

In this connection an analysis of the nature, significance and mechanics of rapid single-copy street distribution of news and advertising may be deemed helpful.

THE NATURE OF THE WORK DONE

(a) The Rapid Single-copy Street Sale of Newspapers Primarily Involves a Service to the Public and Not the Sale of a Physical Commodity to Newsboys. Effective Performance of This Service Requires Speed and Volume. Speed is Necessary Because the News is Perishable and Volume Because Advertising Depends on It. The Publishers Seek to Achieve Both by Close Supervision Over the Work of the Newsboys.

The sale of a newspaper is plainly not the sale of an ordinary commodity. News and other features contained in the newspaper are the vehicle for the advertising carried in the papers. "Advertisements first appeared in the Impartial Intelligencer of London in March, 1648. Today the power of the press is due to the revenues obtained from this source, making possible the maintenance of large editorial staffs and organizations for the collection of news. In 1927, $252,811,104 and $724,837,083 were received by newspapers in this country from sales and advertising respectively." [13]

The success of a newspaper came to depend on the amount of advertising it carried, and its circulation, both as to quality and quantity,[14] determines the rates it may charge. Circulation, therefore, has become the main preoccupation of any enterprising publisher. "Around 1880 the more important daily newspapers underwent great economic change * * * As store and other display advertising increased in amount, newspapers were continually forced to increase their size. This increase was possible without

[13] 19 New Standard Encyclopædia 62.

[14] 12 The World Book Encyclopædia 4955.

raising subscription rates because of the substitution of wood pulp paper for rag and a constant lowering in the price of the pulp stock. *The newspaper became, consequently, a complicated economic product with two things for sale: to the reader it sold news, editorials and other interesting reading matter; to the advertiser it offered white space at so much per inch. Complications came from the fact that these two joint products had to be marketed in the same container—the white paper on which the news was printed and on which the advertising was displayed.* More and more the advertiser paid the heavier burden in the cost of production. Because advertising rates were based on the number of papers distributed, there resulted a wild race[15] for circulation."[16] (Emphasis added)

But there was a further problem. At first, advertisers had no accurate means of gauging the newspapers' circulation. Then "In 1914 there was organized the Audit Bureau of Circulations. This has become the leading agency for securing reliable information about the circulation and distribution of publications. The work of this bureau came about as the result of several organizations which were interested in the endeavor to develop a generally acceptable means of obtaining reliable, standardized statements of circulation. It was felt that the time was ripe for devising such means, and that the advertiser had a right to know what he was buying when he bought space in publications. It was desirable to know not only the total circulation but also something about the various aspects of this circulation, facts which are as important as the statement of the total amount of the circulation * * *.

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[15] For a popular account of some well-known resulting circulation wars see *Imperial Hearst*, Lundberg (Modern Library Edition) Chapter V, p. 149 *et seq.*

[16] 16 Encyclopædia Britannica 357.

Argument

"In general, the audit bureau reports attempt to answer three main questions: (a) *How large is the circulation?* (b) *Where does it go?* and (c) *How was it obtained?* The bureau operates by requiring from its publisher members a so-called publisher's statement every six months. The bureau itself makes an audited report once a year.

"The Audit Bureau of Circulation became of great value to advertising, because it made available reliable statements of circulation covering many different phases."[17] (Emphasis added)

The sale of a newspaper thus differs from the sale of an ordinary commodity in at least two vital ways: (a) the publisher does not derive his main revenue from the sale of the papers, which are sold for a negligible fraction of their actual cost; and (b) the fact that the advertising must get home to the ultimate reader, who is the real customer both of the publishers and of the advertisers, compels the publisher to retain a deep interest in where the papers are sold, to whom and in what quantities. The publisher must create and meet a continuous demand for the papers, and must have in his service persons willing to be placed on the streets, for fixed periods, in fixed places, and subject to discipline and removal or discharge, as the last link in the chain of distribution, upon a scale and under a control adequate to and appropriate for the demand.

"Spot" news has an undoubted appeal and its lure is widely used to promote the necessary sales. Therefore speed in printing and distributing became crucial. The problem of the publishers is how to accomplish the sale of as many papers as possible, as quickly as possible, to as many different and diverse persons as possible. One of the method by which that is done is the street-sale system

[17] 1 Encyclopædia Britannica 200.

as perfected in Los Angeles.[18] Promotional schemes and devices, news content, features and prizes help to arouse interest, but in the case of ultimate street distribution it is promotional activity according to a well-defined plan in placing, and controlling and stimulating the newsboys in the continuous exposure to the public which converts that interest into sales.

Contrary to the general understanding, large newspapers are not printed merely in several editions, with gaps in between while the news comes in. Aside from "extra" editions, there are numerous "lifts" between editions, so that the same edition contains several printings, the difference between one "lift" and its successor being additional news. Another device for printing "spot" news

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[18] "The methods of delivery employed by newspapers vary in utility with the character of the community and the publication, size of circulation, and frequency of appearance." 12 World Book Encyclopædia 4955. There are, of course, other factors making for variation in circulation systems: the climate and the impact of the history of newspapers in the community also have their effect. Publishers, like others, differ in energy, imagination and enterprise, among other things. Circulation wars have had an effect—not always baleful. The costly and exhausting wars in which the weaker papers were destroyed suggested to the survivors that they could well work together. Thus major publishers frequently have the same groups of newsboys selling so-called competing papers, sometimes as the direct result of collective bargaining with the newsboys' unions (see contracts, Appendices "D", p. 21a; "E", p. 32a, 39a; "G", p. 43a containing provisions against "split" corners, which means against placing two newsboys on the same corner which has been found to have the effect of splitting the sales without increasing their total number). The publisher thus gets his coverage and the newsboy tends more to get a living wage; the right to discharge by cutting off the supply of papers is preserved, not only by agreement among the publishers, but also by the economic fact that discharge by one of several large newspapers effectively puts an end to the newsboys' employment in the industry.

to increase the sale of the papers as they roll off the presses is the "fudge",[19] which is an insertion, usually in a front-page "box", of some late morsel of news, which reaches the streets in a matter of minutes.[19]

The presses therefore roll out the news almost continuously.[20] Within a few minutes a late score of a baseball or football game, late racing news, "flashes" from the battlefronts, or any bit of news may be inserted into

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[19] Newspaper Presswork (Technical Trade School, International Printing Pressmen and Assistants' Union of North America, Section Six) p. 103:

> "All press builders have introduced what is termed a 'fudge device' for the printing of late news.
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> The word 'fudge' means to insert, or to inject, or to interpolate, and that is about what it is intended the 'fudge cylinder' should do.
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> The 'fudge' is a small cylinder attached to the second impression cylinder of the press, or built independently over angle bars between press and former, and is designed to print the latest news in one or two columns without the necessity of stereotyping a new full page whenever any new news note is added * * *.
>
> *As illustrative of the use of the 'fudge', the reporting of an important game of baseball may be taken as an example. The forms are closed at the completion of the seventh inning and the plates made and put on the press. A portion of the last column is left blank, the space to be filled in by the use of the 'fudge'.*
>
> *As the game advances the news is sent in direct to the linotype operators, who cast the lines and place them in the 'fudge turtles', and everything is ready for the last word from the ball field, so that it is not unusual that three minutes after the umpire has announced his last decision the 'extras' are being handled upon the streets.*" (Emphasis added)

[20] "High-speed presses can produce 60,000 newspapers in an hour * * *." 12 World Book Encyclopædia 4956.

the presses and reach the streets under the watchful eye of the circulation departments for immediate distribution to the public.[21]

Now in the light of this highly efficient and complex machinery for the distribution of the newspapers, it is easy to imagine what would happen if these street newsboys were not on the spot to distribute the papers to the public. Since the papers are fully returnable, the publisher, for the protection of his circulation and to insure against being swamped with returns, must follow through to the ultimate consumer, the man on the street. Thus the street newsboy is not merely the terminus, he is the focal point for the assault which must be made against the sales resistance of the man on the street. And primarily it is in the interest of the publisher, who must be concerned with the sale to the reader and not with "sales" to the

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[21] Yesterday's news is history. No one knows that better than newspaper publishers. Thus the newsboys here are required to "blast" the headlines, to display the papers prominently, or "pitch that sheet", to "hustle", to "work the white lines", to be continuously at the "spots" assigned to them, and to remain there for a fixed time. Elaborate circulation departments are maintained for this purpose; "district managers", "checkmen", "supervisors", "road men" and "street men" attached to those departments are employed by publishers to see that the newsboy does his work. This does not mean of course that the district managers or their assistants are always at the elbow of the newsboys, for the newsboy's work is necessarily done outside the publisher's plant and frequently over wide areas. But it does mean that there is a rigidly articulated system necessitating that the newsboys be subject continuously to the control of the district managers as to the details of their work. No newsboy would dare question the authority of these supervisors, by whatever name they might be called. In this way, then, the publishers are assured that the newsboys will exert themselves immediately to distribute to the public the newspapers the rolling presses turn out, so that the Audit Bureau of Circulation figures may demonstrate the value of the paper to the advertisers.

newsboy, that the assault is made by the newsboys, who furnish the last intimate impulse in the complex process of single-copy distribution. The newsboy is thus the final and pivotal figure in that phase of the distribution process where the Audit Bureau of Circulation certifies to the advertisers how many of and to whom a publisher's newspapers are actually being sold.

We do not understand that the publishers here challenge these facts. Several of them insisted before the Circuit Court of Appeals on the necessity for speed.[22] It is difficult to see any reason for that insistence unless it was to explain *why* the publishers exercise such detailed control over the newsboys' work. But to explain is not to explain away; to justify the control is not to obliterate it from the record in this case. At the most, the explanation shows there is nothing arbitrary about the system. But nobody says it was arbitrary; surely the fact that there

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[22] "Newspapers are the only product of the petitioner. While current, they have face value. The day after issue, they are worthless except as junk paper. Petitioner is anxious, naturally, to sell as many of its product as possible." Opening Brief for Hearst Publications, Inc., pp. 24, 25.

"The publisher of a newspaper is vitally interested in increasing circulation. Distribution immediately following the issuance of metropolitan papers is a fundamental. Street issues of the Los Angeles Times have an economic life expectancy of about three hours, as is demonstrated by the time of their issuance, viz., 6, 9 and 11:30 p. m. (R. 1156-1157)." Opening Brief for Los Angeles Times-Mirror, p. 33.

"A realistic approach to the question of 'time to work' must be made. Nothing is more perishable than a newspaper, and to contend that because a boy selling newspapers is 'required' to sell the various editions at or about the time they first appear on the street for sale, that such requirement is an evidence of authority or control, is not, in our opinion, meritorious." Reply Brief for Stockholders Publishing Company, Inc., p. 19.

is a very good reason for the control exercised serves only to emphasize the fact that the control actually exists. But the *reason* for the control is immaterial; the *fact* is crucial. If that control was arbitrarily exercised, the system might have been changed during "the long period of dispute"[23] over the newsboys' status.

Moreover, it is important to note that speed alone, with the consequent control over single-copy distribution, is only part of the picture. Newspapers are perishable, but that alone does not make them unique. The point in this connection is that *the risk of loss through perishability is not on the newsboy but on the publisher.* For not only does the latter lose the wholesale price of the paper (which is comparatively negligible) but he is deprived *pro tanto* of the circulation upon which his major revenue depends. That is the reality of the matter. It is a long flight from that reality to elevate these newsboys to an exalted status the benefits and prerogatives of which they in no wise enjoy.

These cases are thus a far cry from those involving the sale of an ordinary commodity.[24] One who sells fruits, vegetables, vacuum cleaners or any ordinary commodity at wholesale is not directly or immediately concerned with

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[23] Dissenting opinion of Judge Denman, 136 Fed. (2) at 615.

[24] The distinction is also clear in this context between daily newspapers, on the one hand, and magazines and periodicals, on the other. The latter are made of sterner stuff; none has a life expectancy of three hours. They depend on a more durable medium than news to attract a large sale, and are not, therefore, published in numerous rapidly changing daily editions; there are no "extras", their issues are not "lifted", and there are no "fudges". And none of them could possibly maintain an elaborate single-copy street distribution department or make possible even a substantial fraction of a living wage to full-time or other newsboys.

the identity and number of the ultimate consumers. He derives his profit solely from the sale of his product to the retailer. His interest in its resale is a long-range interest. The newspaper publisher, on the contrary, cannot merely "sell" [25] his newspapers to the newsboys, and then forget about them until the final figures on sales are computed.

Moreover, the manufacturer or producer of an ordinary commodity maintains no elaborate street circulation department [25a] constantly directing in detail the activity of each retail outlet. If he maintains any staff for high-pressure, rapid, hour-by-hour, day-by-day single street sales of his commodity, the members of such a staff would be his employees. And the ordinary commodity is not dependent on extrinsic values like advertising, which requires a larger and larger circulation if profits are to be greater and greater. The newsboys provide the means by which the required extra circulation is obtained. Stripped of the camouflage of the "mere-sale-of-a-commodity-at-retail" argument, the service or work done is for the publisher and the publisher alone. Each of the publishers involved in these cases is served by hundreds of individuals whose contribution to the publishing business is one of purely manual labor. This relationship is not fortuitous and the data presented by the record herein with respect to

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[25] The dissenting opinion in the Circuit Court of Appeals stated that the Board would have been justified in concluding that "title" to the newspapers did not pass to the newsboys and that therefore no real sale was involved, even if the service aspect of what the newsboys do should, as the majority held, be deemed irrelevant.

[25a] The Herald alone maintained direct and personal control over the newsboys through about sixty-eight District Men (R. 49-56), who worked under a Superintendent of Street Sales and several branch managers (R. 331, 336, 337, 548, 549).

the relationship is typical of the system of distribution prevalent in Los Angeles. The publishers are, and daily seek to be users of newsboys' labor for it is such use which best furthers their enterprises.

"A newspaper never ceases to be a business organization. Though it may promote lofty ideals and may give all the news * * * it can hardly be called a success unless it makes a profit. The first requisite of success in terms either of influence or profit, is a large number of readers."[26] Everywhere in the country (except in New York City) the papers are fully returnable, and the Audit Bureau of Circulation does not give substantial credit for copies of newspapers "eaten"[26a] by newsboys. The publisher must therefore see to it that as many of his papers as possible are disposed of by the newsboys' single-copy street sales. A newsboy, perhaps content with small sales, and who will not "hustle", finds that his services are no longer required.

These newsboys are far different from the "independent merchants" they are said to be, purely as a matter of law. The Board was justified in finding they are not independent as a matter of fact. Engaged as they are in performing the personalized service of rapid single-copy distribution of newspapers in the public domain, that is, on the public sidewalks, at fixed "spots" or corners, they are a normal group of workers, belonging to the same union,[26b] and doing their job continuously, year after year,

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[26] 12 World Book Encyclopædia 4954.

[26a] *Imperial Hearst, op cit.* pp. 295, 300.

[26b] The Congress of Industrial Organization newsboys' union involved in these cases is itself a striking example. These proceedings have been pending for almost five years. The petitions for investigation and certification of representatives pursuant to Section 9 (c) of the Act were dated April 18, 1939 (R. 3 et seq). The original dispute of course antedated the filing of the petitions.

for the same publishers. With no technical skill and no capital, they have nothing to sell or furnish except their labor and endurance. Their under-privileged status and subjection to physical and economic control mark them as a typical employee group.

THE DECISION OF THE CIRCUIT COURT OF APPEALS

(a) The Court Ignored the Services Performed by the Newsboys for the Publishers and under Their Complete Control as Dictated by the Necessities of this Unique Industry

From the foregoing analysis several unquestionable facts emerge. What is loosely referred to as the mere "sale" of a newspaper is really (1) the sale of paper and ink, (2) the distribution of news, and (3) the distribution of advertising matter. The transaction is further complicated by the fact that all three operations are carried on by the same process. As relevant to this case the distribution work involved in that process is done by the newsboys. The main product the publishers have for sale is advertising matter, which is not sold to or by the newsboys. The newsboys never derive one penny of salary, profit or other remuneration from the sale of the advertising; th

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of Berkshire Mills v. N.L.R.B., 139 F (2) 134 (C.C.A.3, Dec 1, 1943), where the court, the complaint having been issued Nov. 6, 1937, said (at p. 136) "This case bids fair for the unenviable distinction of being Jarndyce v. Jarndyce of labor law... The delay is — contrary to the express general policy of the Act."

they are not even "vendors"[27a] of the news.[27b] They are not "tradesmen" or "merchants"; they have no stock; they have no place of business; they are only assigned a place to work; they have no capital; they have no security; they work at the will or the whim of the publishers; in essence they have nothing to sell but their services.[27c]

The product actually "sold" (in the sense that there is a price charged for the papers to the boys, who then are paid, as a handy incentive device, by letting them keep the difference between that price and the price to the public) involves the public aspect of this business, to wit, the dissemination of news, and this formal "sale", as the publishers themselves have always contended, is the ren-

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[27a] It is significant that the press, comparatively recently, has universally applied this name or some other similar one, such as "news vendor", "corner owner", "corner operator" or "newsdealer", to persons making street single-copy sales of their papers. The word "newsboy" has practically disappeared from the editorial rooms, where brevity has always been a prime desideratum, and these longer, more dignified terms substituted.

[27b] When newspaper readers have a complaint about the service, the complaint is made to the publisher of the paper, and not the newsboy.

[27c] As the court observed in *Calumet Publishing Co. v. Chicago Tribune*, Appendix "H2",

> "it may be seriously questioned whether the transaction called in common parlance 'the sale of a newspaper' is a sale in the legal sense. An essential element in legal sales is the transfer of title in the commodity sold without a residuum of control of its use remaining in the seller. Can the purchaser of the news make unrestricted use of it? Of course not. The Associated Press and other newsgathering agencies would go out of business if every purchaser of a newspaper could reprint its contents and distribute it. No title passes to the printed material which alone constitutes the consideration for the payment of the purchase price."

dition of a public service, to which "sales" of papers are merely incidental.

There can be no objection to this analysis. Indeed the publishers have heretofore insisted upon it.[28] In these cases the publishers for obvious reason have chosen to ignore the realities inherent in the thing they do for the superficial and misleading nomenclature of "vendor-vendee". Indeed the Herald has belatedly made the discovery that its newsboys are "sales agents".

Now the complex of functions described above clearly shows that the newsboys perform, in their turn, a service in a double aspect; (a) the service of the dissemination of news, which is a service to the public as well as to the publishers; and (b) a service to the publishers alone in the distribution of the advertising matter.

It is respectfully submitted that the consequence of these facts, which constitute the bedrock reality in the industry, is that the boys are in no substantial sense, legal or otherwise, "independent". The fact that the newsboys are a vehicle for the rendition of these services shows (1) that the arguments based on the vendor-vendee relationship are untenable; and (2) that the right to control over the boys in the rendition of the service to the pub-

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[28] The publishers have uniformly urged and the courts have held that the sale of newspapers is essentially a service. The authorities are collected and the arguments presented in a brief filed by the publishers in Chicago in the case of *Calumet Publishing Co. et al. vs. Chicago Tribune, et al.*, where the question was whether persons engaged in the distribution of newspapers in Chicago were "persons engaged in the business of selling tangible personal property at retail" and therefore subject to the Illinois Retailer's Occupational Tax Act. Excerpts from the publishers' brief and the text of the opinion of the Court are made a part hereof as Appendices "H" and "H2", respectively.

lisher is necessarily retained by the publisher in his own interest, and, as this record shows, is in fact abundantly exercised, in detail. No independent merchant is subjected to any similar complete control.

We do not here contend that the fact that newsboys are instruments in the rendition of a service rather than retailers of a physical commodity alone establishes the status of employment. Conceivably the service rendered by the newspaper and the newsboy to the reader could be through an independent agency. But the facts in this case show that far from entrusting the promotional work and close supervision inherent in the distribution system here under scrutiny to outsiders, the publishers have jealously ~~retrieved~~ RETAINED those functions for themselves.

The court, in ignoring the above, shut its eyes to the most fundamental and operative facts in the industry, and inherent in the findings of the Board in this case, that the newsboys are employees of the publishers within the meaning of the Act.

(b) The Court's Approach to the Problem Was Unduly Narrow

The National Labor Relations Act purposed to end an era of bitter, prolonged and wasteful industrial strife. The coverage of the Act must be deemed to be as broad as the conditions which led to its enactment, and the remedies therein provided as coterminus with the industrial unrest intended to be removed. The Act recognized at long last that freedom of contract begins where inequality of bargaining power ends. The Congress, in its wisdom, prescribed collective bargaining to redress the balance. This Court held the prescription and the Act

well within the legislative power. Thereafter, the function of the courts,[29] as repeatedly defined by this Court, was limited.

But "statutory construction" was still available[30] as an exclusively judicial province, although a trial *de novo* was excluded. It is respectfully suggested that the Court of Appeals made an unwarranted use of the first and an unauthorized resort to the second. For while the court did make a perfunctory reference to the Act as being "in like manner" with "several" other "federal statutes • • • based upon a broad policy of public benefit,[31] it did not attempt to analyze the Act, or consider how it differs from the other federal statutes in question. Also, while making no reference to cases in state courts holding news-

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[29] Thirty-five years ago, Dean Pound said:

"To economists and sociologists, judicial attempts to force Benthamite conceptions of freedom of contract and common law conceptions of individualism upon the public of today are no less amusing—or even irritating—than legislative attempts to do away with or get away from these conceptions are to bench and bar. The nullifying of these legislative attempts is not regarded by lay scholars with the complacent satisfaction with which lawyers are wont to speak of it. They do not hesitate to say that 'the judicial mind has not kept pace with the strides of industrial development'. They express the opinion that 'belated and anti-social' decisions have been a fruitful cause of strikes, industrial discord, and consequent lawlessness." Pound, *Common Law and Legislation*, 21 Harvard Law Review at 384.

[30] "There are two ways in which the courts impede or thwart social legislation demanded by the industrial conditions of today. • • • The second is a narrow and illiberal attitude toward legislation conceded to be constitutional, regarding it as out of place in the legal system, as an alien element to be held down to the strictest limits and not to be applied beyond the requirements of its express language." Pound, *ibid.*, p. 385.

boys to be employees for various purposes, it did cite state cases holding they were not employees for those various purposes, as exemplifying the rules determinative of the relationship of master and servant, (not that of employer and employee) as those rules are stated in Corpus Juris.[32]

The Circuit Court also relied upon Webster's New International Dictionary[33] as a guide to the meaning of the word "employee" within the meaning of the National Labor Relations Act.

But the court left out of consideration entirely the history, purpose and structure of the very Act to be construed. It regarded the word "employee" as taking no "color from its surroundings", and held that the statute, so far from affecting the approach to the problem,[34] must be entirely excluded from consideration. This result seems grounded only in a latent and perhaps unconscious hos-

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[31] Citing two cases decided by this Court in 1915 and 1920, respectively.

[32] In holding there was no substantial evidence here in these cases to support the Board's finding of the requisite status, the Court suggested a comparison with a newsboys' certification case arising in Houston, Texas, where the Board, there being no street circulation department maintained by the publisher, found the newsboys there were not under or subject to the publisher's control, and hence not its employees.

[33] The first dictionary definition of employee cited by the court is "one employed by another". That is sufficient to cover this case. The second definition makes the relationship dependent on "wages or salary" derived in the service of the employer, without any definition of what constitutes salary or wages. It has not been true for a long time, even as a matter of judicial decision, that the relationship depends on the form the compensation for service takes.

[34] Cf. *Ross vs. Post Publishing Co.*, 129 Conn. 564, 29 A. (2) 768 (1943).

tility to the purpose of the Act, although the court appeared to say it was aware of its broad policy.[35] By excluding this class from the coverage of the Act, thus denying to persons who constitute, on the facts, a classic example of the kind of person obviously intended to be one of the special objects of the legislative solicitude,[36] the court, in effect, construed the Act as if in obedience to the "ancient" rule that statutes in derogation of the common law are to be strictly construed.[37]

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[35] "Courts are fond of saying that they apply the old principles to new situations. But at times they must apply new principles to situations both old and new. The new principles are in legislation. The old principles are in common law. The former are as much to be respected and made effective as the latter—probably more so as our legislation improves. The public cannot be relied upon permanently to tolerate judicial obstruction or nullification of the social policies to which more and more it is compelled to be committed." Pound, *ibid.*, at 406, 407.

[36] Cf. *Lehigh Valley Coal Co. v. Yensavage*, by L. Hand, J. (C. C. A. 2, 218 Fed. 547; cert. denied, 235 U. S. 705, 35 Sup. Ct. Rep. 282):

> "The word 'employed' * * * must be understood with reference to the purpose of the act and where all the conditions of the relation required protection, protection ought to be given. * * * Such statutes * * * should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them."

[37] "The proposition that statutes in derogation of the common law are to be construed strictly * * * assumes that legislation is something to be deprecated. As no statute of any consequence dealing with any relation of private law can be anything but in derogation of the common law, the social reformer and the legal reformer, under this doctrine, must always face the situation that the legislative act which represents the fruit of their labors will find no sympathy in those who apply it, will be construed strictly, and will be made to interfere with the *status quo* as little as possible." Pound, *ibid.*, p. 387.

The Board approached the problem of the inferences to be drawn from the facts in the light of the pervasive purpose of the Act, and was guided and informed by the experience gleaned in its administration. The finding that the newsboys were employees, was grounded in the recognition that the word "employee" must be viewed in its "conventional" as well as in its legal sense. The court said it too was defining the word "employee" in the "conventional" sense, but obviously the court meant the conventions of judicial decisions antedating the Act to be construed, whereas the Board meant the customs [38] in the industry to which the Act was being applied, and in the common understanding of the position of the newsboys, as persons who in all respects were intended to be beneficiaries of the remedial and ameliorative provisions of the Act.

The court's rejection of the administrative view of the detailed control exercised as an element showing the basic function of the newsboys as employees "in a realistic economic sense" in an industrial enterprise, in favor of the "conventional" [39] meaning of the word "as devel-

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[38] The Board in its statement of facts mentioned that there was a history of collective bargaining, although no contracts had been made between the parties. It is submitted that the fact that the parties before the Board themselves had chosen to engage, in their industrial relations, in the very course of conduct required by the Act is significant in solving the question the Board had before it.

[39] The dictionary meanings of "conventional" conceivably pertinent are: "Formed by agreement or compact; stipulated; contractual; —opposed in law to legal and judicial. Growing out of, or depending on, custom, or general agreement; established or sanctioned by general concurrence or usage; formal." Webster's New International Dictionary (2nd Ed. 1939)

oped under the common law and statutory enactments" at the time the statute was enacted, is weighted with the deadening implication that a nostalgic step backward can be helpful in giving effect to the broad purpose of the Act. Common law rules, isolated from the Act, or from any concrete case, are easy to state but hard to apply. The administrative ruling simply placed the newsboys in the context of the Act being administered,[40] and is more certainly and more readily comprehensible and practicable than the rule laid down by the court. But in any event the Congress confided to the Board and not to the court the function of finding the facts and of inferring therefrom, as a matter of administration, the persons to be covered thereby.[41] Unless the Act itself is to be read out of the law applicable to these cases, the Board and not the court is the tribunal better qualified[42] to decide the question. To adopt the lower court's view of the Board's function (or lack of it), would import into the Act that balkanization which has been the fate of the employment

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[40] "We recognize that legislation is the more truly democratic form of law-making. We see in legislation the more direct and accurate expression of the general will. We are told that law-making of the future will consist in putting the sanction of society on what has been worked out in the sociological laboratory. That courts cannot conduct such laboratories is self evident." Pound, *ibid.*, p. 406.

[41] Indeed, judicial review of administrative determinations, particularly in certification of collective bargaining representatives, is not something which "inheres in nature". Cf. *Switchmen's Union of North America vs. National Mediation Board*, 13 L. R. R. 382 (Nov. 22, 1943).

[42] "• • • courts are less and less competent to formulate rules for new relations which require regulation. They have the experience of the past. But they do not have the facts of the present." Pound, *ibid.*, p. 403.

concept in the courts, and would reduce the status of the Board to that of a lay jury, or lower. Such a view would deprive the Board's rulings of the weight normally to be attributed to those of an expert and policy-making as well as fact-finding tribunal. Judicial review amounting to a trial *de novo* in this context would *in limine* render the plain purpose of the Act and the function of the Board in this area nugatory or illusory, as the long history of these proceedings shows. It was not the intention of the Congress to convert the question of what constitutes an "employee" into a jurisdictional fact to be re-examined by each court throughout the nation at the instance of any party who might choose to litigate the question.[43]

The publishers too, argued for the "conventional meaning" of "employee". But they too apparently meant the customs of judicial decision, while the Board meant the customs of industry. The Court, feeling free to choose, chose the former interpretation, thus itself adding to the very judge-made customs upon which it was relying. But an approach to the problem "in the light of the mischief to be corrected and the end to be attained"[44] presupposes the "custom" of popular action and not the "custom" of judicial decision.[45]

In the newspaper industry these newsboys are treated in an intensely practical way. The question is not whether they are in all respects within a formal framework and subject to every conceivable incident of the employment rela-

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[43] *Schantz vs. American Dredging Co.*, 138 Fed. (2) 534, at 536, 537.

[44] *Warner v. Goltra*, 293 U. S. at 155, 55 Sup. Ct. Rep. 46 (tugboat master *held* "seaman" for purpose of Merchant Marine Act).

[45] "Formerly it was argued that common law was superior to legislation because it was customary and rested upon the consent of the governed. Today we recognize that the so-called custom is

tionship at common law, but rather whether a sufficient number of the factual incidents of the relationship appear, from which the inference of employment for the purpose of the Act could reasonably be drawn.

Certainly no one in the industry actually treated these men as "independent contractors" or "independent businessmen", and no one referred to them in that way, except ironically, or by advised and purposeful designation. And certainly they are, in the dictionary, "conventional" sense, "employed" by the publishers in the rapid single-copy street distribution of the newspapers, the sale thereof being a mere incident to that service and the method of compensation merely another familiar example of payment by piecework, with all that method of payment implies.

It is submitted that the court's reliance upon its own concept of "conventional" in this field and in this industry, as opposed to the finding of the Board, which had several times passed on it,[46] was manifest error.

(c) The Court Brushed Aside the Findings and Usurped the Functions of the Board

The various aspects of the part played by the newsboys in the highly articulated system of distribution of

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a custom of judicial decision, not a custom of popular action." Pound, *ibid.*, at p. 406.

[46] ~~It is submitted that the court's reliance upon its own finding of what is "conventional" instead of the convention in this field and in this industry, which~~ is the sense ~~in which the Board used the word, was manifest error.~~ On this point the court quoted from the Board's opinion as follows: "the term 'employe' embraces all employees in the conventional as well as legal sense." (136 Fed. (2) at 612) See also, *Matter of the Constitution Publishing Co.*, 29 N. L. R. B. at 112; *Matter of Seattle Post-Intelligencer Department of Hearst Publications, Inc.*, 9 N. L. R. B. 1262.

news and advertising matter developed by the publishers should have been considered as a whole. But the court accepted the publishers' view that particular parts of the whole should be separated, regarded alone as the controlling factors, and the bulk and essence of the whole ignored. It is submitted, with deference, that the Board certainly was not bound so to isolate a part from the whole, to be bemused by tendentious argument about an ordinary "vendor-vendee" relation, and to shut its eyes to the newsboys' work, considered as a whole. On the contrary, having given effect to the over-all picture, its findings should have been sustained.[47]

The court said it found justification for substituting its own ruling for that of the Board in *United States vs. American Trucking Assn's.*[48] But that case does not afford the slightest support for the court's position. The question there was whether a clause in a statute should be construed to confer jurisdiction on the Interstate Commerce Commission, to the exclusion of the Wage and Hours Division, over *all* the employees of a common carrier. Such a holding arbitrarily would have excluded all employees, whether their duties were in promotion of safety of operation or not, from the benefits of the Fair Labor Standards Act. On that question no evidence was

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[47] Cf. the remarks of Cardozo, J. in *Glielmi vs. Netherland Dairy Company*, 254 N. Y. 60, 171 N. E. 906: "The contract is adroitly framed to suggest a different relation, but the difference is a semblance only, *or so the triers of fact might find.* * * * Much of his apparent freedom is in truth apparent only. * * * If he does anything at variance with the will of his employer, its policy or preference, he knows that his contract of employment may be ended overnight. He is bound hand and foot as long as he works the route at all, his freedom an illusion and his independence but a name."

[48] 310 U. S. 534, 60 Sup. Ct. Rep. 1059.

relevant; no administrative findings of fact could have been made to vary or interpret the question presented or the result reached. Since all the employees were admittedly employees of the carrier, no findings on the question of what constitutes an employee were involved. The court exercised an "exclusively judicial function".[49]

But it did become necessary for this Court, within that range of inquiry, to consider the meaning of the word "employee". It held the word is not a word of art, but takes color from its surroundings; that it is not a word of "definite content". Now the "content" of the word "employee" was there to be determined for the purpose of allocating jurisdiction over persons admittedly employees, between one agency and another. But the "content" of the word "employee" in the cases at bar is to be determined for the purpose of finding whether persons claimed to be independent contractors are within the coverage of the labor laws. The interpretation of the statute was there an exclusively judicial, not fact-finding function, and the opinion of this Court effectively ended the justiciable controversy; whereas in the cases at bar, the interpretation of the term used in the statute and the existence of the relationship itself is determined only by, and varies with, the facts in each case. But administrative fact-findings are conclusive if substantial evidence[50] sup-

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[49] Even so, the opinion of the agencies in question, as this Court there said, was entitled to great weight; yet the weight to be given those opinions in such cases is not at all comparable to the weight to be given administrative findings of fact within the doctrine of administrative finality. *Rochester Telephone Corp. v. United States*, 307 U. S. 125, 59 Sup. Ct. Rep. 743.

[50] Actually, the findings made as to control justify, from this cold record, the frank statement that it was a control so complete as to approximate the status of the conventional servant of an earlier century.

ports them. And so the "content" of "employee" in the *American Trucking* case was primarily legal; the content of the same word in the cases at bar is primarily factual, and the facts found by the Board, upon which the administrative determination was predicated, were entitled to the weight the law assigns to them. The cases are thus readily distinguishable.

Of course, if the Board had erred in interpreting the intent of the Congress, or if its findings of fact had not been supported by substantial evidence, the position taken by the court below might have been comprehensible. But neither of these elements appeared; on the contrary, the intent was given its proper effect* and the findings of fact abundantly supported. The concept of employment is one without definite content. The result of the court's action is to reverse the direction of the Act, confining it within the most narrow limits possible. Certainly the Act was not given the treatment to be accorded what Dean Pound has felicitously termed "creative legislation".[51]

The consequent reversal of the Board by the majority of the court deprives many persons, held to be, *legally*, independent contractors, of the only economic weapons appropriate or available to persons of their status, and attributes to the architects of the Act an intention to create a limbo to which these persons and others similarly situated are assigned.[52] And this result is attained in disre-

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* See *infra*, subdivision (d).

[51] *Outlines of Legislation*, p. 10 (Harvard University Press, 1934).

[52] The publishers, when refusing to bargain collectively with the newsboys or to recognize the newsboys' right to organize, are accustomed to make the physically impossible and practically ineffective suggestion that they will always be glad to meet with *individual* newsboys to discuss mutual business problems—presumably the problems of whether and where the newsboy is to stand

gard of the findings of fact made and inferences drawn therefrom by the Board and without any compelling reason, either in law, in the Act [53] or in experience,[54] for reaching such a result. And this in an area in which this Court has recently held that judicial restraint must be exercised. See the Switchmen's cases, *supra*, note 41.

(d) The Court Below Declined to Give Any Weight to the History, Policy and Purpose of the Act Which This Court Has Found To Be a Valid Legislative Experiment in the Field of the Industrial Relations of the Nation

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The opinion of the Court of Appeals reflects an exoteric disregard of the customs prevalent in the newspaper industry, of the history and purpose of the legislation involved, and of the findings of the tribunal to which Congress confided the administration of the Act.

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on the sidewalks; when and for how long; how he is to display the papers; how hard he is to work or "hustle" or "pitch that sheet" or "work the white lines"; when he is to be "cut off" or discharged; and similar mutual business problems.

[53] "In our fifth case, friction between the terms of a statute and doctrines or principles of the common law, the case is otherwise. Here the legislator is within his own undoubted province, and his rules have the superior authority. Hence the courts could not entertain a suggestion that legislation contrary to the doctrines of the common law is invalid. Granting its validity, they have to consider whether they will interpret it liberally, giving full and free development to its policy and spirit, or narrowly and strictly, refusing to suffer any suspension or modification of the existing judge-made law beyond what the letter of the enactment dictates." Pound, *op. cit.*, p. 396.

[54] "Judicial law-making for sheer lack of means to get at the real situation, operates unjustly and inequitably in a complex social organization. One might find more than one illustration in the conflict between judicial decision and labor legislation. * * *

Rejecting the history of collective bargaining and industrial strife in this area of the newspaper industry, the court declined to receive the Act into "the body of the law as affording not only a rule to be applied but a principle from which to reason".[55]

The concept of employment under the Act is no more conventional than the Act itself is conventional.[55a]

"What court that passes upon industrial legislation is able or pretends to investigate conditions of manufacture, to visit factories and workshops and see them in operation, and to take the testimony of employers, employees, physicians, social workers, and economists as to the needs of workmen and of the public. * * *" Pound, *ibid.*, at pp. 404, 405.

[55] "Four ways may be conceived of in which courts in such a legal system as ours might deal with a legislative innovation. (1) They might receive it fully into the body of the law as affording not only a rule to be applied but a principle from which to reason, and hold it, as a later and more direct expression of the general will, of superior authority to judge-made rules on the same general subject; and so reason from it by analogy in preference to them. (2) They might receive it fully into the body of the law to be reasoned from by analogy the same as any other rule of law, regarding it, however, as of equal or co-ordinate authority in this respect with judge-made rules upon the same general subject. (3) They might refuse to receive it fully into the body of the law and give effect to it directly only, refusing to reason from it by analogy but giving it, nevertheless, a liberal interpretation to cover the whole field it was intended to cover. (4) They might not only refuse to reason from it by analogy and apply it directly only, but also give to it a strict and narrow interpretation, holding it down rigidly to those cases which it covers expressly. The fourth hypothesis represents the orthodox common law attitude toward legislative innovations. * * * But it is submitted that the course of legal development upon which we have entered already must lead us to adopt the method of the second and eventually the method of the first hypothesis." Pound, *op. cit.* at p. 385.

[55a] As has been pointed out, the court below confined this word to its meaning as defined in decided cases, none of which interpreted

If anything in the Board's concept comes with the shock of novelty and change to the common law lawyer, it is perhaps the same shock with which he views the new Act in its entirety.

In effect, the court below differed from the Board as to the application of the National Labor Relations Act to an entire segment of the national economy. But industrial turmoil was not, before 1935, and is not since, submissive to all the factitious requirements of any such doctrinaire concept of the employment relation. The reasoned basis of the Act is that our competitive system cannot properly function unless the parties to a bargain have a reasonable equality of bargaining power. That reasoning is fully applicable as between employer-and-employed,[56] and the present cases plainly constitute an occasion for the application of the established national policy in this regard. The concentration of wealth and power among individual publishers and in associations of many publishers (such

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a labor relations act. Conventionally considered, the word "employee" is not now deemed by the ordinary man as the equivalent of "servant". Millions of workers would indignantly deny their employers are their "masters", and would repudiate the application of the word "servant" to them, connoting, as it does, a servility characteristic of a rigid and stratified class society which is as foreign to the ethos of our industrial system or human philosophy as anything could be. Accordingly, the words "master" and "servant" are, currently, not even a part of our industrial vocabulary; only in the lawbooks do the terms appear as interchangeable with "employee" and "employer".

[56] "I have seen the suggestion made that the conflict between the employers and the employed is not competitive. * * * If the policy on which our law is founded is too narrowly expressed in the term of free competition, we may substitute free struggle for life." Mr. Justice Holmes, in *Vegelahn vs. Guntner*, 167 Mass. at 107, 44 N. E. 1077.

as the American Newspaper Publishers' Association) are not and cannot be paralleled by any even remotely similar aggregates of power among the newsboys. Moreover, in the national economy and in this industry, the newsboys are in no wise "tradesmen" or "merchants". Their association offers no threat of harm to the public. They have nothing to sell but their services. Publishers argue, and the courts and legislatures agree (Appendices "H" and "H2"), that newsboys do not and cannot "sell" the news, and certainly not the advertising; and that essentially they are engaged in the rendition of a service, *to* the public generally, in part, but specifically *for* the publishers. Since therefore all the newsboys have to dispose of is the personal service, they are able to render, all[37] they can combine for and bargain about are the terms and conditions of their employment by the publishers in the rendition of that service.

It is small wonder that no reason has been offered for excluding the newsboys from the coverage of the Act except the question-begging one that they are not employees within the meaning of the Act and were not intended to be. To support that view the publishers advance no argument based upon or derived from the Act, perhaps because, in its coverage provisions, the Act marks a significant mile-stone and a forward-looking guidepost in the process, begun at the turn of the century and intended, with a minimum of government intervention, to benefit precisely such men as these.

This is the first case in the entire complex of social legislation the past ten years has produced which presents to this Court the nature of the modern employment relationship. And at this late date the Court is urged to con-

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[37] Each newspaper's physical paper and ink is negligible in value, and in price, which is controlled by the publishers.

fine the coverage of the Act to a concept based on an agency relationship, derived from a petty economy, which *identifies* the master with his servant for the purpose of tort liability, and to disregard the *diversities* of interest implicit in the relationship, in a modern industrial society, with which Congress sought to deal for the purpose of peacefully reconciling those diversities. That is to say, the Court is asked to ignore the realities which inhere in the modern concept of employment in favor of the legacy of an outmoded handicraft economy.

Moreover, respondents have repeatedly insisted that the Board's developed administrative construction of the employment relationship must be disregarded because the common law of master and servant is asserted to be more precise. But this is, at best, a nostalgic appeal to the delusive exactness of a mere formula. As the Restatement of Agency expressly states, "The relationship of master and servant is one not capable of exact definition." (Section 220 (b)). The existence of the common law relationship depends in each case upon the imponderables and uncertainties inseparable from the process of "weighing factors" to determine whether in a given instance a sufficient number of common law elements of employment is present. This process has so balkanized the employment relationship in the courts as to make absurd the contention that a common law yardstick is a definite one.[38] To subordinate the plain purposes of the Act to all the niceties of the old master and servant relationship is to dis-

[38] The collision between industrial fact and legal theory has created a situation in which cases repeatedly arise and are now *sub judice* all over the country, as to what is an "employee" in street circulation departments in the newspaper industry, within the meaning of divers statutes, for divers purposes, and under divers sets of facts. The formula alone do not vary, but being dependent on the Macedonian salad of varying facts upon which the

regard sound standards of statutory construction; and the notorious uncertainty [39] and conflict which have resulted generally from the application of only common law standards hardly justifies engrafting any such archaic and static concept upon a pervasive and modern legislative innovation.

And surely, apparent symmetry and deceptive certainty may be abandoned, without regret, where reality, function and progress intervene.

Perhaps nothing more completely condemns the court's resort to the common law as a basis for determining who is an employee under the Act than the court's reliance upon *New York Indemnity Co. vs. Industrial Accident Commission*, 213 Cal. 43, 1 P. (2d) 12. In that case, the California Supreme Court on rehearing revers-

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existence of the relationship in each case turns, the formula are utterly meaningless until the last judge to whom appeal may be made has spoken. And with each differing set of facts, that process begins all over again. The only certainty emerging from those case histories is the certainty of prolonged and expensive court proceedings, often to the detriment of persons able neither to wait nor to pay. Should not the courts allow the full scope for which the legislature provided here in its attempt to adapt the rule of law "to the swiftly moving facts" of industry?

[39] "• • • the most cited leading case in the United States reached the California Supreme Court three times, and the court reversed itself twice within a year on the same facts. • • • .

"• • • in Pennsylvania's only case, the Workmen's Compensation Referee, the State Compensation Board, and a Judge of the Allegheny County Common Pleas Court found a newspaper boy to be an employee, whereas the highest court of appeal on this subject, the Superior Court, finally reversed them all. • • •"

The Newspaper Boy, Charles A. Rohleder, at p. 13.

The California case to which Mr. Rohleder refers is the *New York Indemnity* case discussed supra, the Pennsylvania case is *Balinski v. Press Pub. Co., et al.*, 118 Pa. Superior 89, 179 A. 897. That case was cited with approval by the Circuit Court of Ap-

ed its own well-reasoned decision in the same case (294 Pac. 707) upholding a workmen's compensation award to a newsboy. In its earlier decision, the court had held that the newsboy occupied a personal service relationship, but on rehearing the court found that the relationship was not one of personal service after all. The crux of the reversal is contained in language marked by an unusual but illuminating candor:

> "The petitioners herein, both through their counsel and through the aid of amici curiae, have presented much plausible argument as to the effect of upholding the legal conclusion and award of the commission upon the numerous army of more or less irresponsible persons of immature years, of physical infirmities, and of failures in other vocations, who come at length within the classification of newsboys in the farflung daily or periodical distribution of newspapers and other periodicals to the public at large. The impossibility in the main of exercising any more than a very limited supervision or control over this

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peals, which, like the Superior Court of Pennsylvania, conceived its duty to be to substitute its own views for the administrative views as to the fact of employment under statute. But in another Pennsylvania Compensation case, Pennsylvania's Court of last resort, the Supreme Court, took precisely the opposite view of the judicial function. In a *per curiam* opinion, the Court said:

> "Per Curiam.
>
> The only question before the referee and the compensation board, which was one of fact, was as to the relation which the husband of the appellee sustained to the appellant at the time he was killed. The finding of the board was that he was an employee, and not an independent contractor, as the defendant contended. This finding is conclusive: Messinger v. Lehigh Valley R. R. Co., 261 Pa. 336.
>
> Appeal dismissed and award affirmed."
>
> *Belmonte v. Connor*, 263 Pa. 470, 106 A. 787.

promiscuous and ever-changing body of assorted individualities occupied from day to day in the vocation known by the title of "newsboys" has been plausibly urged as a reason why the legislature in the adoption and limited application of the Workmen's Compensation Act could not have intended to embrace within its terms this promiscuous and in a sense large irresponsible class of persons, and that to impose upon the publishers of newspapers and other periodicals responsibility for their individual mischances while pursuing such vocation would work disaster to a very large number of persons who now receive a measure of their livelihood in the retailing of newspapers and other publications, but with respect to whom such publishers could not in reason be held to assume the responsibilities arising out of the established relation of employer and employee."

It is plain that whether or not a publisher is so situated with respect to his newsboys as to diminish their exposure to industrial risks has no ascertainable relevance to the issue of whether he should be required to bargain with them. Moreover, it is difficult to understand the pertinence, in the present context of the fact, even if true, that newsboys are subject to "physical infirmities" and are "failures in other vocations." And surely any assertion that the newsboys involved herein are "more or less irresponsible persons of immature years" or a "promiscuous and ever-changing body of assorted individualities" would, on this record and for the purpose of this case, be both inaccurate and immaterial. Finally the asserted immaturity and irresponsibility of the newsboy which was said legally to justify defeating a workmen's compensation award can hardly furnish a ground for terming him, legally, an independent merchant, as the court below did.

CONCLUSION

(1) The newsboys, viewing their work and status as a whole, are employed by the publishers.

(2) They are the personalized and final link in a chain of distribution; they function as the last integral part of a highly developed system of rapid single-copy street distribution of news and advertising matter, and perform this service primarily and directly for the publishers, and under their complete control. The speed and volume pivotal in that system are so guaranteed.

(3) The essential service aspect of the newsboys' work renders the "sales" aspect thereof irrelevant. The service is the substance; the "sale" the form.

(4) The findings of the Board are supported by substantial evidence.

(5) The Board observed and applied the appropriate rules to the facts upon which the existence of the relationship was predicated.

(6) The industry has a long history of newsboy union organization, of collective bargaining between newsboys' unions and publishers, and of industrial strife, paralleling the familiar wasteful pattern which led to the enactment of the statute the Board administers.

(7) The denial to the newsboys of employment status under the Act would defeat its purpose in this regard and deny all meaning to the history of organization, collective bargaining and contractual relations which the Act was intended to protect and foster, and would promote the industrial strife the Congress intended to remove.

(8) The court below relied upon, at best, inconclusive and isolated facts, and the barren holding is expressly as-

serted to be deduced from rules antedating the Act—rules inconsistent with and irrelevant to its history and purpose.

(9) The holding appealed from assigns no weight to the administrative findings and conclusions, and arbitrarily usurps the function of the Board, with the result that a substantial and underprivileged section of our economy are excluded from the benefits of the very Act of Congress obviously designed and peculiarly appropriate for their protection.

Respectfully submitted,

ARTHUR W. A. COWAN,

Attorney for International Printing Pressmen and Assistants' Union of North America, A. F. L.

APPENDIX "A"

LOCAL UNIONS OF NEWSBOYS, VENDORS, CARRIERS, DISTRIBUTORS AND CIRCULATION WORKERS CHARTERED BY THE I. P. P. & A. U. OF N. A. FROM THE OFFICIAL DIRECTORY OF THE INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA, A. F. L., OCTOBER 16, 1942

Chicago, Ill.—Newsboys' and Carriers' Union No. 451.
Cincinnati, Ohio—News Carriers No. 311.
Des Moines, Iowa—Newsboys' and Carriers' Union No. 383.
Minneapolis, Minn.—Newsboys' Union No. 397.
Minneapolis and St. Paul, Minn.—Carriers' Union No. 401.
New York, N. Y.—Newsboys' Union No. 471.
Norristown, Pa.—Newsboys' Union No. 428.
Philadelphia, Pa.—Newsboys' No. 473.
Portland, Oregon—News Vendors' Union No. 396.
St. Louis, Mo.— Paper Carriers No. 450.
San Diego, Calif.—Newsboys & Carriers No. 446.
Baltimore, Md.—Circulation Distributors No. 503.
Houston, Texas—Circulation Distributors No. 460.
Houston, Texas—Newsboys' Union No. 456.
Memphis, Tenn.—Newspaper Distributors No. 399.
Perth Amboy, N. J.—Newspaper Circulation Workers No. 475.
Pittsburgh, Pa.—Branch Managers, News Dealers, Distributors and Circulation Employees No. 414.
Utica, N. Y.—News Distributors No. 437.
Atlanta, Ga.—News Carriers and Distributors No. 501.
Atlanta, Ga.—Atlanta News Carriers and Circulation Workers No. 445.

Appendix "A"

Atlanta, Ga.—Allied Newspaper Workers No. 470.

Augusta, Ga.—News Carriers and Circulation Workers No. 480.

Kansas City, Mo.—News Carriers and Distributors No. 499.

San Francisco, Calif.—Newspaper Periodical Vendors and Distributors No. 468.

San Jose, Calif.—News Carriers and Distributors No. 461.

Cleveland, Ohio—Shopping News Carriers No. 379.

East Bay Cities, Calif.—Shopping News and Circulation Carriers Union No. 417.

Los Angeles, Calif.—Advertising Distributors Circulation Workers No. 463.

Philadelphia Suburbs, Pa.—Suburban Carriers No. 484.

San Francisco, Calif.—Mission Carriers Union No. 453.

Chicago, Ill.—Community Newspaper Carriers and Distributors No. 469.

San Diego, Calif.—Circulation Workers No. 422.

Wichita, Kansas—Newsboys' Union No. 502.

APPENDIX "B".

"AMERICAN FEDERATION OF LABOR
Washington, D. C.

March 25, 1943

Mr. Arthur W. A. Cowan
Liberty Trust Building
Philadelphia, Pennsylvania

Dear Mr. Cowan:

The information transmitted to you herewith may be cited to the Court and is derived from the official records of the American Federation of Labor.

AMERICAN FEDERATION OF LABOR RESEARCH AND INFORMATION SERVICE

Unions of Newsboys, Carriers and Distributors Directly Affiliated with the American Federation of Labor

Name of Union	*Company & Location*
Newspaper Carriers Union 14712	Jewish and other Newspapers in Philadelphia, Pa.
Newsboys' Union No. 5834	Seattle Times Seattle Star Seattle Post Intelligencer Seattle, Washington
Newspaper Carriers Union 17785	Newspapers in Malden, Mass.
Federal Labor Union 21332*	Newspapers in N. J., Pennsylvania & vic.
Federal Labor Union 20786	Newspapers in Pittsburgh, Pa.

Appendix "B"

Name of Union	*Company & Location*
News Dealers and Carriers Assn. 21375*	Newspapers in Philadelphia, Pa.
Newspapers and News Distributors Office Workers No. 21345	St. Louis, Mo.

Please do not hesitate to let me know if you need any further data to assist you.

Very truly yours,
William Green, *President*
American Federation of Labor"

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*"AMERICAN FEDERATION OF LABOR
Washington 4, D. C.

January 21, 1944

Mr. Arthur Cowan
238 South Thirteenth Street
Philadelphia, Pennsylvania

Dear Mr. Cowan:

Federal Labor Union 21332 and Newsdealers and Carriers Union 21375 have transferred to the International Printing Pressmen's Union in November and October, 1943 respectively.

If I can be of further assistance, kindly let me know.

Very truly yours,
(sgd.) Wm. Green,
President,
American Federation of Labor"

fod

APPENDIX "C"

Newspaper Minimum Wage Scales, Hours and Working Conditions
of
Subordinate Unions of the
International Printing Pressmen and Assistants' Union
of North America

October 1, 1942

This document is prepared by the Service Bureau of the International Printing Pressmen and Assistants' Union, and is intended only for the use of International Union Representatives and Subordinate Union officers and Scale Committees

Atlanta, Ga. P. 445. Population 302,288.
News Carriers and Circulation Employees.
Constitution Publishing Company
Contract: June 2, 1941 to June 2, 1944.
Notice: 60 days prior to expiration or June 2, 1945. Circulation employees, wage scale openable 60 days prior to any anniversary date.

Scale:	Per Week
District supervisors	$35.00
Car allowance: $10.00 per week additional.	
Newspaper carriers: When home delivered circulation is:	Weekly purchase price of paper to carrier is
44,539 copies	$0.1600
46,833 copies	0.1575

49,350 copies	0.1350
52,500 copies	0.1325
56,000 copies	0.1500
59,500 copies	0.1475
63,070 copies	0.1450
66,223 copies	4.1425
69,534 copies	0.1400

Where news stands are handled by carriers, $0.07 per copy shall be paid the publisher for all collections made.

Advertising and promotional matters: Permitted.

Free subscriptions: Upon demand, carriers shall make such deliveries at $0.025 per week bonus per copy.

Transfer of Routes: Carriers, permitted if new route has 25 or more papers than transferor's route.

Atlanta, Ga. P. 501.

Carriers and Distributors.

Atlanta Journal Publishing Company **(Journal)**.

Contract: November 3, 1941 to November 3, 1944.

Notice: 60 days prior to expiration or November 3, 1945. Wages, 60 days prior to May 3, 1943.

Hours: 40-hour week.

Scale:	Day or Night
District Managers:	
First 6 months	$25.00
Second 6 months	27.50
Second year	30.00
Third year	33.00
Fourth year	36.00
Thereafter	39.00

Relief men: District manager's scale after 30 days.

Vacations: 1 week with pay.

Appendix "C"

Chicago, Ill. P. 469.

Newspaper carriers and distributors.

Contract: May 20, 1940 to May 20, 1942. Continued.

Notice: 60 days prior to expiration or any anniversary date thereafter.

Cincinnati, Ohio. P. 311. Population 455,610.

News Carriers.

Contract: Verbal agreement.

Scale:

	Commission
$0.03 papers	$0.01
0.10 papers	0.03

Post: 3% additional commission on collections.

Times-Star: 5% additional commission on collections.

Cleveland, Ohio. P. 379. Population 878,336.

Shopping News Carriers.

Contract: May 19, 1936 to May 19, 1939. Continued by agreement.

Notice: 60 days prior to expiration.

Hours: Average, 6-9 per week.

Bulldog delivery: 3-7 p. m.

Morning delivery: 5-9 a. m.

Scale:

Class "A" carriers: $0.95 per delivery.

Class "B" carriers: $0.85 per delivery.

$0.10 additional when paper runs over 20 pages.

Deliveries per week: Minimum of 2.

Des Moines, Iowa. P. 383. Population 159,819.

Newsboys and Carriers.

Contract: December 18, 1939 to December 18, 1941. Continued.

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Scale:

Commission $1.33 per 100 sales

Yearly bonus: (paid weekly).

Full-time corner salesmen $130.00

Outside corner salesmen 78.00

Inserts: Prohibited.

East Bay Cities, Calif. P. 382.

Circulation Workers.

Berkeley Gazette Publishing Co.

Contract: June 28, 1940 to June 27, 1941. Continued.

Hours: 40-hour week.

Overtime: Time and one-half.

Scale:	Per Week
Assistant circulation manager	$36.00
Second assistant circulation manager	26.00
Third assistant circulation manager	26.00

East Bay Cities, Calif. P. 417.

Shopping News and Circular Carriers.

Berkeley Gazette Distributing Company

Contract: June 28, 1940 to June 27, 1941.

Notice: 30 days prior to expiration or any anniversary date thereafter.

Scale:

Carriers, Flat guarantee of $0.60 per month.

One delivery, one piece:

$0.30 per hour, $0.75 minimum.

One delivery, two pieces:

$0.25 bonus per piece.

One delivery, more than 16 standard pages:

$0.25 bonus.

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If less than 4 deliveries a month, $0.25 paid for each delivery less than 4.

Supervisors:

One delivery:
$0.50 per hour, $1.50 minimum.

Two deliveries:
$1.00 bonus.

If less than 4 deliveries a month, $1.00 paid for each delivery less than 4.

Car allowance: $1.25 per delivery.

East Bay Distributing Service; Rapid Distributing Co.
Contract provisions same as **Berkeley Gazette Distributing Company** except for varying effective contract dates.

Kansas City, Mo. P. 499. Population 399,178.

Newspapers Carriers and Distributors.

South-West News Company.

Contract: November 3, 1941 to November 3, 1942.

Notice: 60 days prior to expiration or any anniversary date thereafter.

Hours: 40-hour 5-day week. Female employees, maximum 9-hour day.

Scale:	Per Week
Male employees:	
First 4 months	$16.00
Thereafter	18.00
Female employees:	
First 4 months	15.00
Thereafter	17.00

Overtime: Time and one-half, 2 hours additional permitted on any 2 days in the week at straight time rates.

Holidays and Sundays: Holidays, time and one-half.
Vacations: After 1 year, 1 week with pay.

Kansas City News Distributors.

Contract provisions same as **South-West News Company,** except:

Contract: May 8, 1942 to March 1, 1943.

Scale:	Per Week
Male employees:	
First 4 months	$18.00
Thereafter	22.00
Female employees:	
First 4 months	17.00
Thereafter	21.00

Los Angeles, Calif. P. 463. Population 1,504,277.

Advertising Distributors and Circulation Workers.

East Los Angeles Distributing Co.

Contract: June 28, 1940 to August 31, 1941. Contracts with same provisions but varying dates are effective for other distributing companies.

Notice: 30 days prior to expiration or any anniversary date thereafter. Wages, any 30 days.

Hours: Truck drivers, 8-hour day.

Scale: In negotiation.

Distributors:

Papers, 20 pages or less: $2.00 per thousand.
Over 20 pages: $2.25 per thousand.
Expense allowance in addition where necessary.

Truck drivers: $4.00 per day.

Reporting for Work: Minimum of 2 hours' pay at $0.40 per hour.

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Memphis, Tenn. P. 399. Population 292,942.

Newspaper Distributors.

Contract: September 15, 1941 to September 15, 1942.

Notice: 90 days prior to expiration.

Effective date of scale: September 15, 1941.

Hours: 40-hour week. City District Managers, 40-hour 5-day week.

Scale:	Per Week
City District Manager, Street Sales Manager, and Country Circulation Traveling Representatives:	
First year	$21.00
Second year	24.50
Third year	27.50
Fourth year	32.50
Country Circulation Town Representatives:	
First year	17.50
Second year	19.00
City Complaint Men	10.00

Dismissal Pay: One week's pay for each 8 months' employment up to a maximum of 24 weeks pay. If dismissed within 6 months after last vacation, 1 additional week's pay; if dismissed more than 6 months after last vacation, 2 additional weeks' pay.

Expense Allowance: City District Managers, $7.00 per week plus $5.00 for bundle delivery; Country Circulation Traveling Representatives, $20.00 per week; City Complaint Men, $2.50 per week, Street Sales Managers, $2.50 per week plus $2.50 for bundle delivery.

Overtime: Time and one-half.

Vacations: After 6 months, 1 week with pay; after 1 year, 2 weeks with pay.

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Minneapolis and St. Paul, Minn. P. 401.

Population of Minneapolis and St. Paul, Minn. combined 780,106.

Shopping News Carriers.

Contract: November 1, 1940 to November 1, 1941. In negotiation.

Notice: 60 days prior to expiration or any anniversary date thereafter.

Effective date of scale: November 1, 1939.

Scale:

Class "A" carriers: $0.85 per delivery.
Class "B" carriers: $0.75 per delivery.
$0.10 per hundred for extra circulars.

Inserts: Permitted. $0.10 per hundred.

Holidays and Sundays: All holiday deliveries before 12:00 o'clock, paid for at rate of $0.15 extra per delivery.

Perth Amboy, N. J. P. 475. Population 41,242.

Newspaper Circulation Workers.

Contract: May 15, 1942 to May 15, 1944.

Notice: 30 days prior to expiration or any anniversary date thereafter. Wages, 30 days prior to any anniversary date.

Hours: 40-hour 6-day week.

Scale:	Per Week
Supervisors:	
First year	$26.00
Second year	28.00
Third year	30.00
Fourth year	32.00
Fifth year	34.00
Thereafter	36.00

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District managers:	
First year	21.00
Second year	22.00
Third year	23.00
Fourth year	24.00
Fifth year	25.00
Branch managers:	
First year	18.00
Second year	20.00
Third year	22.00
Fourth year	23.00
Fifth year	24.00
Clerks:	
First year	17.00
Second year	18.00
Third year	19.00
Fourth year	20.00
Fifth year	21.00

Supervisors managing branches: $5.00 additional.

Part-time branch managers: $0.45 per hour; minimum, 22 hours.

Overtime: Time and one-half.

Holidays and Sundays: Overtime rate.

Vacations: After 1 year, 1 week with pay. Six months to 1 year, 3 days with pay.

Red Bank, N. J. Population 10,974.

Contract: January 26, 1941 to January 26, 1942.

Hours: 40-hour 5½-day week.

Scale:	Day
Circulation managers and circulation solicitors	$17.00

Part time employees working 20 hours or less: $0.35 per hour. Car allowance: $0.04 per mile.

Overtime: Time and one-half.

Holidays and Sundays: Time and one-half.

Reporting for work: Day's pay.

Phoenix, Ariz. P. 472. Population 65,434.

Newsboys and Carriers.

Contract: August 1, 1941 to July 31, 1944.

Notice: 60 days prior to expiration or any anniversary date thereafter.

Scale:	Commission per paper
Daily or Sunday	$0.025

Inserts: Prohibited, except at publisher's request.

Pittsburgh, Pa. P. 214. Population 669,817.

Branch Managers, News Dealers, Distributors, and Circulation Employees.

Contract: November 3, 1941 to November 2, 1942.

Notice: 60 days prior to expiration.

Hours: 48-hour 6-day week.

Scale:	Per Week
City Home District Salesmen using own car	$43.50
City Home Delivery Salesmen using own car	38.50
City Home Delivery Sales Supervisors	38.50
Suburban Salesmen	35.00
City Home Delivery District Salesmen	32.30
City Home Delivery Salesmen	29.00

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City and Home Delivery Salesmen	25.50
City Suburban Verifiers	25.50

Dismissal Pay: After 6 months, one week's pay.

Overtime: Actual time worked based on average hourly rate.

Portland, Oreg. P. 345. Population 305,394.

Inserters.

Contract: In negotiation.

Hours: 40-hour 5-day, 37½-hour 5-night week.

Scale:	Day or Night
Inserters	$30.00
Helpers	18.00

Overtime: Time and one-half.

Holidays and Sundays: Regular rates.

Portland, Oreg. P. 396.

News Vendors.

Contract: September 27, 1940 to September 27, 1941. In negotiation.

Notice: 30 days prior to expiration or September 27, 1942.

Hours: Minimum of 5 days per week.

Scale:	Commission
Daily newspapers:	
Retailing at $0.05	$0.02½ per copy
Retailing at $0.03	0.01½ per copy
Retailing at $0.02	0.01 per copy
Sunday newspapers:	
Retailing at $0.10	0.06½ per copy

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San Diego, Calif. P. 422. Population 203,341.

Newspaper Circulation Workers.

Contract: May 26, 1941 to September 30, 1942.

Notice: 30 days prior to expiration or any anniversary date thereafter.

Hours: Filing, billing, mailing, office, counter and junior office clerks, full-time office boys and cashiers: 40-hour 5-day week. Circulators and assistants, route men, district managers and relief men: 6-day week, **Tribune-Sun**, city agent distributors: 30-hour 6-day week.

Effective date of scale: May 26, 1941.

Scale:	Per Week
Circulators, **Tribune-Sun**	$27.50
$0.05 bonus per 100 copies sold.	
Assistants, **Tribune-Sun**	20.00
$0.025 bonus per 100 copies sold.	
Circulators, **Union**	25.00
$0.15 bonus per 100 copies sold.	
Assistants, **Union** (Sunday work only)	5.00
$0.075 bonus per 100 copies sold.	
District Managers:	
First 6 months	22.50
Second 6 months	25.00
Second year	27.50
Third year	30.00
Fourth year	32.50
Fifth year	35.00
Sixth year	37.50
Over 6 years	40.00
Billing, filing, mailing, office and counter clerks:	
First year	18.50
Second year	20.00

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Third year	22.50
Over 3 years	27.50
Route men	18.00
City agent distributors, **Tribune-Sun**	12.50

Route men and **Union** circulators and assistant circulators receive $0.25 per shift bonus for night work.

Junior office clerks:

First 6 months	16.00
Second 6 months	17.50
Second year	18.50
Third year	20.00
Over 3 years	22.50

Part time clerks paid on an hourly basis ranging from $0.42 for the first 6 months to $0.60 for 3 or more years of service.

Cashiers	26.54

Full time office boys:

First 6 months	15.50
Second 6 months	16.50
Over 1 year	18.00

Dismissal pay: 1 week's pay for each 26 weeks' employment or major fraction thereof. Maximum of 26 weeks' pay.

Expense Allowance: Car allowance of $0.06 per mile for first 25 miles each day, and $0.03 per mile thereafter for circulators, route men, district managers, and distributors using personal cars on business. $6.00 per year for car insurance where required.

Vacations: After 6 months, 1 week with pay; after 1 year, 2 weeks with pay; except city agent distributors, after 6 months, 1 week with pay; after 2 years, 9 days with pay.

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San Francisco, Calif. P. 416. Population 634,536.

Shopping News Carriers.

Contract: Verbal agreement, term indefinite.

Notice: 60 days prior to expiration.

Hours: Average 6-9 per week.

Bulldog delivery: 3-7 p. m.

Morning Delivery: 5-9 a. m.

Scale:

Class "A" carriers: $0.95 per delivery.

Class "B" carriers: $0.85 per delivery.

Deliveries per week: Minimum of 2.

San Francisco, Calif. P. 428.

Carriers Union

The Advertising Distributors.

Contract: June 10, 1941 to June 10, 1942.

Notice: 30 days prior to expiration or any anniversary date thereafter.

Scale:

Carriers: Flat guarantee of $0.60 per month.

One delivery, one piece:
$0.30 per hour, $0.75 minimum.

One delivery, two or more pieces:
$0.25 bonus per piece.

One delivery, more than 16 standard pages:
$0.25 bonus.

Supervisors:

One delivery:
$0.50 per hour, $1.50 minimum for each delivery.

Two deliveries:
$1.00 bonus.

Car allowance: $1.25 per delivery.

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San Francisco, Calif. P. 453.

Mission Shopping News Carriers.

Contract: July 31, 1941 to July 31, 1943.

Notice: 30 days prior to expiration or any anniversary date thereafter.

Scale:

Carriers	$0.80 per delivery
If delivery contains more than 16 standard pages	$0.25 bonus

If less than 4 deliveries a month, $0.25 paid for each delivery less than 4.

Supervisors	$2.00 per delivery

If less than 4 deliveries a month, $1.00 paid for each delivery less than 4.

San Francisco, Calif. P. 468.

Newspaper and Periodical Vendors and Distributors.

Contract: June 3, 1940 to June 3, 1942. In negotiation.

Notice: 60 days any time after April 3, 1942. Wages and hours, 60 days prior to June 3, 1941.

Hours: 46-hour 6-day week. Part time corners, 24-hour 6-day week.

Scale: In negotiation.

	Weekly Guarantee
Full time corner news vendor	$20.80
Part time corner news vendor	15.00
Vendors selling special wrapped editions or special event editions of one date only:	
Special wrapped	1/6 full time guarantee

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Special event	1/6 part time guarantee
Earnings, per hundred papers:	
Daily	$ 2.00
Sunday	3.00

Call back: 1/6 weekly part time guarantee with maximum of 4 hours' work.

Reporting for work: 1/6 weekly guarantee.

Ratio of Newsboys to Vendors:

Zone 1	3 to 5
Zone 2	2 to 1
Zone 2 (a)	13 to 1

APPENDIX "D"

CONTRACT
UNITED NEWSPAPER SELLERS AND CARRIERS OF AMERICA
Otherwise Known as
THE CLEVELAND NEWSPAPER VENDERS' UNION
and
THE SCRIPPS PUBLISHING COMPANY
THE PLAIN DEALER PUBLISHING COMPANY
and THE CLEVELAND COMPANY

This memorandum and these articles of agreement made and entered into at Cleveland, Ohio, on the 9th day of June, 1937, by and between UNITED NEWSPAPER SELLERS AND CARRIERS OF AMERICA, otherwise known as THE CLEVELAND NEWSPAPER VENDERS' UNION, a voluntary unincorporated association (hereinafter designated as the "Union"), for and on behalf of any and/or all of its members duly represented in the premises, and THE SCRIPPS PUBLISHING COMPANY, publisher of The Cleveland Press (hereinafter referred to and designated as the "Press"), THE PLAIN DEALER PUBLISHING COMPANY, publisher of The Cleveland Plain Dealer (hereinafter referred to and designated as the "Plain Dealer") and THE CLEVELAND COMPANY, publisher of The Cleveland News (hereinafter referred to and designated as the "News"), jointly and severally. Wherever the aforesaid Companies are hereinafter mentioned, they shall be designated as the "Publishers". Wherever one of the aforesaid Companies is hereinafter mentioned it shall be designated as "Publisher" or by its appropriate name aforesaid.

Appendix "D"

WITNESSETH:

That the parties hereto, for and in consideration of the terms, conditions, covenants, agreements and promises of each to the other hereinafter contained, mutually agree as follows:

1. That this agreement shall be in force and effect for a period of three (3) years, from the 9th day of June, 1937, or until the close of business on the 9th day of June, 1940, except that wages only may be opened for negotiation by the Union by notice in writing to the other party of the changes desired, said notice to be served not later than thirty (30) days prior to June 9, 1939.

1-A. If either party hereto desires to commence negotiations for a new contract to become effective upon the expiration date, it shall notify the other party in writing sixty (60) days prior to the expiration date, and accompany the notice with a copy of the proposed new contract. The respondent party may within twenty (20) days formulate a counter-proposal, setting forth the conditions it desires to incorporate, and negotiations shall commence within 5 days after the respondent party submits its counter-proposal. If no counter-proposal is filed, the existing contract shall be considered to be the respondent party's counter-proposal.

1-B. If notice is not given by either party, as above described, it shall be considered as a renewal of this agreement for one year. Nothing herein contained, except failure to give aforesaid notice, shall be construed to continue this contract beyond its expiration date until and unless mutually agreed to in writing.

2. The Publishers agree to supply members of the Union through their drivers or routemen with copies of their newspapers, and to classify locations as follows:

Appendix "D"

(a) *Four-hour Newspaper Sellers.* Four-hour newspaper sellers are defined as those who are required by the Publishers to work not to exceed four (4) hours on duty in one day, Saturday excepted, but this shall not include Plain Dealer midnight or first-edition newspaper sellers as hereinafter defined. The rate of compensation for non-guaranteed sellers shall be at the rate of One Dollar ($1.00) per hundred for the News, Press and daily Plain Dealer and Two Dollars ($2.00) per hundred for the Sunday Plain Dealer.

(b) *Six-hour Newspaper Sellers.* Six-hour newspaper sellers are defined as those who are required and so notified by the Publishers to spend more than four (4) hours, but not more than six (6) hours on continuous duty in any one day, between the hours of 12:00 o'clock noon and 8:00 o'clock p. m. on downtown corners, and between the hours of 12:00 o'clock noon and 10:00 o'clock p. m. on outskirts corners, but this shall not include Plain Dealer midnight or first-edition newspaper sellers as hereinafter defined. Such six-hour newspaper sellers shall be guaranteed a minimum earning of Twelve Dollars and Fifty Cents ($12.50) per week.

(c) *Night Newspaper Sellers.* Night newspaper sellers are defined as those who are required to sell the News or Press commencing at or after 6:00 o'clock p. m. and who shall sell continuously thereafter until not later than 12:30 o'clock a. m. Night newspaper sellers shall be guaranteed a minimum earning of not less than Nineteen Dollars ($19.00) per week.

(d) *Plain Dealer Midnight or First-edition Sellers.* Midnight or first-edition Plain Dealer sellers are defined as those who are required to sell the midnight, i. e., first-edition of the Plain Dealer from the time such edition is picked up and delivered until not later than 4:00 o'clock a. m. Plain Dealer midnight or first-edition newspaper

sellers shall be guaranteed a minimum earning of not less than Sixteen Dollars ($16.00) per week.

(e) *Full-time Newspaper Sellers.* Full-time newspaper sellers are defined as those (first) who are required to sell the Press or News commencing with the first edition thereof and continuously thereafter through the final edition, or between the hours of 10:30 a. m. and 9:00 p. m., but working time to be not more than 8½ continuous hours, except where they sell on night corners, then as to such night corners, full-time newspaper sellers shall sell not later than 6:00 p. m., and further excepted that full-time newspaper sellers on downtown corners where no night seller is stationed may remain on duty not later than 7:00 p. m.; (second) newspaper sellers purchasing morning Plain Dealers from routemen or from the Plain Dealer Publishing Company and who are required to sell continuously all editions, except the midnight or first edition, commencing at or after 4:00 o'clock a. m. and leaving off work not later than 11:30 o'clock a. m. Full-time newspaper sellers shall be guaranteed a minimum earning of not less than Nineteen Dollars ($19.00) per week.

(f) It is understood and agreed that there will be no splitting of corners, i. e., dividing any stated unit of hours hereinbefore specified between more than one seller in any of the classifications herein defined.

(g) It is understood and agreed that the Publishers shall have the right to transfer sellers from one corner to another within the same classification of minimum guarantee, but not from a corner the classification of which carries a higher minimum guarantee to a corner carrying a lower minimum guarantee, provided nothing herein contained shall modify the provisions of Section 5 of this contract.

3. A full-time seller working on one corner who services more than three other sellers shall be guaranteed Two

Dollars ($2.00) per week more than the minimum full-time guarantee. Sellers servicing any other seller, known as a helper, shall have the authority to hire and discharge such helper, provided that seller hiring a helper shall replace any such helper who for just cause is objectionable to the Publisher, upon notice from said Publisher. Sunday Plain Dealer sellers who service other sellers on Saturday night and Sunday morning shall continue to receive one-half cent commission per paper on papers supplied such other sellers, and such other sellers so supplied shall receive two cents (2¢) commission per paper on papers so supplied them. Sellers selling and service men servicing the Sunday Plain Dealer only shall be replaced as soon as is practicable by regular News or Plain Dealer sellers.

4. Newspaper sellers for the News who are now selling or who shall hereafter sell in addition to the News the Sunday Plain Dealer, shall be permitted to sell either or both, provided satisfactory compensation shall be arranged between such newspaper sellers and the News. It is further understood and agreed that if satisfactory compensation cannot be agreed upon, then such seller shall not be required to sell both the News and the Sunday Plain Dealer, but shall be permitted to continue selling the News.

5. The circulation manager or his representative shall at all times be the sole judge as to the number of corner locations in each classification hereinbefore defined in Section 2 of this agreement, or the changing of the classification of any location, and of any and all corner locations at which sellers may be stationed; provided that all guaranteed corner locations now or hereafter established shall be governed as to classification by the provisions of Section 2 of this contract and provided further that no classification of a corner location shall be changed by the Publishers unless and until prior notice of such change of not less than one week is given to the Union in writing. It is

understood and agreed that the President of the Union or anyone duly authorized by him shall at all times have the right to inquire and be informed as to the status of any corner location. It is further understood and agreed that for the purpose of determining corners where a full-time guaranteed seller is at present located a list of such corners will be furnished the Union at the time the contract is signed.

6. The circulation manager or his department heads shall be the judge of competency and shall have the right to hire and discharge upon the following grounds: Incompetency, dishonesty, being under the influence of liquor while on duty, disobedience of office rules of which the Union has been notified in writing, insubordination or neglect of duty.

7. All unsold papers shall be returned to the drivers or routemen delivering same.

8. Extra editions of any newspaper herein referred to may be sold by any and all newspaper sellers available for the purpose. Guaranteed sellers notified in advance by the circulation department of an extra to be run shall report at the newspaper plant or such location as may be designated by the circulation department, in ample time to receive such extras, and such guaranteed sellers so notified shall be guaranteed a minimum earning from the sale of such extras of not less than One Dollar ($1.00), irrespective of regular weekly earnings or guarantee. It is understood and agreed that earnings on the aforesaid guarantee from the sale of extras outside of regular hours shall be considered at all times apart from and not included in the minimum weekly guarantee or regular weekly earnings. It is further understood and agreed that no nonguaranteed seller shall be penalized or discriminated against in any way for inability or refusal to report for sale of extras. Extra editions issued during regular work-

ing hours as hereinbefore defined shall be sold by sellers on duty at the time such extras are issued without additional guarantee.

9. The Publishers will not, jointly or severally, directly or indirectly or through any of their drivers, routemen, other employees, or otherwise, by any means or device whatsoever, or through any inducements, financial or otherwise, attempt to influence the action of any newspaper seller that he join or remain in or refrain from joining or remaining in the Union, and will not discriminate against any newspaper seller for joining or belonging to the Union. The Union likewise agrees that it will not directly or indirectly through any of its officers or members by any means or device whatsoever interfere with the sale of the Publishers' newspapers in any manner, shape or form, provided that no member shall be required to expose himself to the danger of physical harm in the performance of his duties hereunder.

10. Nothing contained in this agreement shall prohibit or prevent any newspaper seller required to be on duty from leaving his location or corner for a reasonable length of time for the purpose of physical relief and for lunch time of not more than one-half hour per working day.

11. It is understood and agreed that no members of the Union shall sell or offer for sale any newspaper or newspapers on any basis of compensation less than the minimum herein agreed to for each classification.

12. No member or members of the Union shall engage in any walkout, strike or boycott, or interfere in any manner with prompt and regular publication, distribution of sales, or aid or encourage, directly or indirectly, such practices against the Publishers, individually or collectively, during the life of this contract or pending negotiations for

a new agreement, nor shall any member of the Union go out on sympathetic strike during the life of this contract.

13. It is understood and agreed that if a member of the Union on a guaranteed corner bootjacks, the time so spent shall be considered time spent performing his duties on the corner.

14. Any guaranteed seller who is a member of the Union and who shall hereinafter fail to keep his membership in the Union in good standing, upon ten (10) days' written notice from the Union to the Publisher, shall thereafter not be permitted to sell on a guaranteed corner unless such member is re-instated to the standing he had prior to such failure, and the Publishers hereby agree to recognize such failure and be bound thereby in the performance of this contract, and the Publishers further agree to employ only a Union member on such vacated corner.

15. It is understood and agreed that members of the Union on all guaranteed corners shall sell on holidays, if required; but substitutions by such members satisfactory to the Publishers, may be made on not less than three (3) days' notice to the driver or street boss. No payment shall be made for holidays or any other day or days on which no paper is published.

16. Publishers agree not to employ any sellers under fourteen (14) years of age.

17. It is understood and agreed that it shall not be the duty of any newspaper seller to deliver or assist in the delivery of papers to other newspaper sellers, provided that going to a nearby corner or across the street for the purpose of getting papers shall not be construed as a violation of this provision.

18. It is understood and agreed that members of the Union while on duty shall not perform any services for

anybody other than the Publishers, unless consented to by the Publishers.

19. The Publishers agree that the wholesale price of newspapers to anyone in the A. B. C. Cleveland city zone shall not be less than the price to members of the Union.

20. The Publishers agree that any seller of newspapers now receiving a pay card and who does not come under the minimums guaranteed in this contract, shall continue to receive his pay card as now received by him. It is further provided that all guaranteed seliers receiving pay cards shall continue to receive same and such pay cards shall be increased Three Dollars ($3.00) per week, provided that when a new seller starts on such guaranteed corner where a pay card now is in effect the Publisher shall not be required to pay more than the minimum guarantee. All guaranteed sellers not now receiving a pay card shall henceforth receive a Three Dollar ($3.00) pay card. In a case where a seller is transferred he shall not be classed as a new seller for the purpose of abolishing the pay card on the corner to which he is transferred, and such seller so transferred shall receive the pay card of the seller on the corner to which he is transferred.

21. No member of the Union shall be required to serve more than one Publisher at the same time on a corner unless conditions and causes justify it in the opinion of the Publishers; provided that on any corner where this clause is invoked the seller oldest in continuous service, competency being equal, shall be given preference, and the seller so eliminated shall be given preference by the Publishers in filling any vacancy which may occur, if no seller of greater competency is available; and further provided, such seller so eliminated through combination corner shall replace any guaranteed seller who has been selling less than six months.

Appendix "D"

22. In the event of any change in the present retail price of newspapers party to this contract during the life of this contract, then in such event the Union may upon notice to the Publishers open negotiations as to wages and such negotiations shall commence within ten (10) days after receipt of such notice. In the event of a change in present edition time of first or last editions by more than one and one-half hours during the life of this agreement, then in such event either party may upon notice to the other party open negotiations for changes in hours, and such negotiations shall commence within ten (10) days after receipt of such notice. It is further understood and agreed that in either or both events the parties may agree that the contract shall continue unchanged until the period of the contract hereinbefore designated expires.

23. *Arbitration.* The parties hereto, being desirous of maintaining harmonious relations, hereby mutually agree to settle all grievances and disputes that may arise under this contract by conciliation, and if conciliation fails, by arbitration, as follows:

All grievances that may arise as to the construction to be placed upon any part of this contract shall first be brought to the attention of the other party and if no satisfactory settlement is reached then the dispute may be submitted in writing to a joint standing committee consisting of two representatives appointed by the Publishers and two representatives appointed by the Union for settlement; said committee shall meet to consider said difference within five (5) days after filing of same, and attempt to settle the dispute; if a settlement is not made within ten (10) days after being submitted to said committee, then the settlement of such dispute shall be left to a Board of Arbitration, as hereinafter constituted. Failure to comply with the procedure or time limits provided herein shall constitute default of any grievance raised by

either party, except that said time limits may be extended by mutual agreement.

Said Board of Arbitration shall consist of five members, two of whom shall be chosen by the Publishers, two by the Union, and the fifth member shall be chosen by the other four. The fifth member of the Board shall act as chairman; he shall be entitled to vote and voice on all questions. He shall be fair and impartial, not connected in any way, interested in, nor obligated to, either the Publishers or the Union. The fifth member of the Board at the time the decision is rendered, after due consideration of all of the evidence, shall determine his honorarium or fee for services as Chairman, it being understood and agreed that the amount set by the Chairman shall not exceed Two Hundred Dollars ($200.00), and shall be divided equally between both parties.

The decision of a majority of this Board shall be final and binding upon all parties. Pending an arbitration award neither party shall change the conditions then existing nor apply coercive or retaliatory measures designed to compel the other party to accede to its demands.

In Witness Whereof, the parties hereto have executed and caused this agreement to be signed in duplicate, the Publishers by their corporate officers duly authorized to act in the premises, and the Union by its officers and the members of its negotiating committee duly authorized to act for and on behalf of the members of the Union in the premises, this 9th day of June, 1937.

United Newspaper Sellers and Carriers
of America

By .....

By .....

By .....

By .....

By .....
By .....
By .....

The Scripps Publishing Company
By .....

The Plain Dealer Publishing Company
By .....

The Cleveland Company
By .....

APPENDIX "E"

UNION AGREEMENTS

Seattle Newspaper Agreement

This Agreement, made and entered into by and between Seattle Post-Intelligencer Department, Hearst Publications, Inc., publisher of Seattle Post-Intelligencer; Star Publishing Company, publisher of Seattle Star; and Seattle Times Company, publisher of Seattle Times, of Seattle, Washington, constituting the party of the first part, and sometimes hereinafter referred to as the Publishers, and Seattle Newsboys Union No. 15834 (affiliated with the American Federation of Labor) party of the second part, hereinafter sometimes referred to as the Union.

Witnesseth: 1. It is understood and agreed that members of Newsboys' Union, Local 15834 shall have the exclusive right to sell newspapers of the Publishers on the streets and street corners in the following described area only, except as hereinafter provided, to wit: The downtown area of the City of Seattle, starting at a point at

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Waterfront and King Street, extending east on King Street to Second Avenue, south on Second Avenue to Dearborn Street, east on Dearborn Street to Seventh Avenue South, north on Seventh Avenue South to Jackson Street, east on Jackson Street to Ninth Avenue, north on Ninth Avenue to East Denny Way, west on Denny Way to Elliott Avenue, south on Ellicott Avenue to Bay Street, west on Bay Street to Waterfront, south on Waterfront to King Street, also the intersection of Twelfth Avenue and Jackson Street.

2. It is understood and agreed that this agreement shall not apply to carrier salesmen, branch salesboys or newsdealers.

3. The Publishers agree that they will not permit carrier salesmen to make single-copy sales in the area described in Section 1, nor deliver editions later than the white Home-delivered Edition of the *Times*, *Star* and *Post-Intelligencer* in this area, excepting on Saturdays.

4. In consideration of the exclusive privilege of Newsboys' Union members to sell newspapers in this area, the party of the second part agrees that its members will not sell any newspapers or periodicals, other than those of the party of the first part; provided, however, that the party of the second part will be permitted upon the establishment of a competitive bona fide daily newspaper to enter into an agreement in identical form with this agreement.

5. Corner owners and operators shall furnish adequate and equal display for all newspapers day or night on each of the four or more corners at street intersections in the downtown area, such display to include boxes where necessary. As used in this agreement, a corner owner or operator is understood to be any person who claims the right to buy and sell newspapers on a certain corner and is recognized by the Union.

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6. In cases where it is necessary for corner owners or operators to hire helpers or assistants in order to provide adequate representation, the corner owners or operators shall employ individuals of their own choosing and shall be responsible for such helpers and assistants in all respects and shall determine their wages, hours and working conditions. It is specifically understood and agreed that the corner owner or operator is at all times responsible for the efficient handling of newspapers on his corner or corners. Any unusual decrease in sales shall be satisfactorily explained to the Publisher affected and the Union will take the necessary steps to maintain efficient service and safeguard the interests of the Publishers. Such inefficiency as may be reported must be promptly remedied by the corner owner or operator. Each Publisher shall be the judge of inefficiency in handling its product. Should any Publisher find that its product is inefficiently handled, such fact shall be called to the attention of the corner owner or operator, who shall correct the matter within twenty-four (24) hours. If correction satisfactory to the Publisher is not made within twenty-four (24) hours, the matter shall be reported to an officer of the Union. If correction satisfactory to the Publisher is not made within twenty-four (24) hours after such protest to the Union, the Publisher shall have the right to replace the corner owner or operator with an individual or individuals of its own choosing; provided, that said corner owner or operator shall have the right of appeal to the special standing committee.

7. Corner owners and operators shall pay for papers at close of each day but shall receive full credit for all unsold papers purchased by them from the Publishers for sale in the downtown territory and returned to the Publishers; provided, that all unsold papers returned for credit must be received by the Publishers or their repre-

sentatives not later than twenty-four hours following the sale of the papers to the corner owner or operator, except that an additional twenty-four hours shall be allowed if the original return period expires on a holiday or the day after a holiday.

8. In cases where extra editions are put out, Publishers desiring additional coverage shall first employ members of the Union when available, but in no event shall such sellers occupy corners which are regularly covered.

9. Corner owners and operators and their assistants and helpers shall sell newspapers only at the regularly advertised single-copy price. The Union agrees that any of its members who sell newspapers of the Publishers at any price other than the published single-copy price shall be prohibited from selling papers in the downtown area and shall be replaced immediately with newsboys who will maintain the regular price schedule.

10. The prices to be paid by corner owners and corner operators for newspapers of the Publishers for all daily editions shall be as follows:

Where the single-copy price is—	*Corner owner or operator shall pay—*
5c	2½c
4c	2c
3c	1½c
2c	1c

Prices for Sunday editions shall be as follows:

Where the single-copy price is—	*Corner owner or operator shall pay—*
15c	10c
10c	6½c

It is understood and agreed that the above prices shall apply to all editions; provided, when papers are sold on the streets for mailing by a Publisher, the single-copy retail price and the wholesale price to the corner owner or operator shall be adjusted by the Publisher to provide for mailing charges; provided further, in no case shall such prices be adjusted so that the profit per copy sold by the corner operator shall be less than for similar sales of regular editions.

11. Immediately after this agreement becomes effective a special standing committee of four (4) members shall be appointed, two (2) members of said committee to be named by the party of the first part, and two (2) members by the party of the second part. Immediately after the members of the special standing committee have been named, the party of the first part shall send the names and addresses of its representatives on the special standing committee to the party of the second part, and the party of the second part shall send the names and addresses of its representatives on the special standing committee to the party of the first part. In case of a vacancy on said special standing committee from any cause, said vacancy shall be filled immediately by the appointment of a new member by the party in whose representation on the special standing committee the vacancy occurs. Each party shall notify the other party immediately of any change in its representation on the special standing committee. If at any time either party desires that one of its representatives on the special standing committee shall appear in the capacity of advocate before the board of arbitration provided for in this section, said representative shall resign from the committee and a new representative shall be appointed in the manner hereinbefore provided. Members of the special standing committee may be represented by proxies.

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To the special standing committee shall be referred for settlement all disputes arising out of the operation of this agreement, all disputes regarding the interpretation of any portion of this agreement, all disputes between any Publisher and any member of the Union, and any and all disputes between the parties hereto, except as in this section provided. The special standing committee must meet within five (5) days from the date on which either party hereto, through its authorized representative, notifies the other party in writing that a meeting is desired, and shall proceed forthwith to attempt to settle any question raised by either party in the written notification. It is definitely understood and agreed that the special standing committee must meet within the five (5) days precribed herein upon notification in the manner herein provided. It is understood and agreed that the special standing committee is established by the terms of this agreement for the settlement of the disputes hereinbefore enumerated, and that the special standing committee is the proper body to take up such disputes in the first instance and to settle them finally in the manner herein provided.

The special standing committee shall have complete jurisdiction over all the aforesaid disputes. The special standing committee shall have no jurisdiction over the settlement of any new agreement, but said committee shall have complete jurisdiction over all other differences arising under this contract.

It shall require the affimative votes of at least three (3) of the four (4) members of the special standing committee to decide the issues, and the decision of the special standing committee in all cases shall be final and such decision shall be binding on the parties hereto.

If the special standing committee cannot reach an agreement on any dispute within ten (10) days (this time

may be extended by unanimous agreement) from the date on which a dispute is first considered by it, at the request of either party hereto, the members of the committee shall form a board of arbitration and shall select a fifth member, who shall be a disinterested party and who shall act as chairman of the board. The board of arbitration thus formed shall proceed with all dispatch possible to settle the dispute.

Said fifth member may be selected in any manner unanimously agreed upon by said four (4) members.

It shall require the affirmative votes of at least three (3) of the five (5) members of the board of arbitration to decide the issues, and the decision of the board of arbitration in all cases shall be final and such decision shall be binding on the parties hereto.

All expenses of the board of arbitration shall be shared equally by the party of the first part and the party of the second part.

Local union laws, rules or resolutions not affecting the interests of the Publishers shall not be subject to arbitration. Disputes or differences as to whether local union laws, rules or resolutions affect the interests of the Publishers shall be referred to the aforesaid special standing committee for settlement, and local union laws, rules or resolutions that affect the interests of the Publishers shall not be made effective without the consent of the Publishers.

This agreement shall be in full force and effect on and after July 1, 1937, for the three years ending June 30, 1940, and thereafter until a new agreement has been settled by conciliation or arbitration in accordance with the terms and provisions of that certain Arbitration Agreement made and entered into by the parties hereto on the fifteenth day

of December, 1936, a copy of which is attached hereto and made a part hereof.

In witness whereof, the said parties, by their representatives duly authorized to act, have hereunto set their hands and seals this 29th day of June, 1937.

Seattle Post-Intelligencer Department.
Hearst Publications, Inc.,

By (Signed) J. J. Callaghan,
Star Publishing Company.
By (Signed) F. W. Webster,
Seattle Times Company.
By (Signed) A. F. Logan.
Seattle Newsboys' Union No. 15834
(Signed) C. Gust Dahlbeck.
(Signed) Frank Turco,
(Signed) Virgil L. Steinmetz.
Seattle Central Labor Council.
By (Signed) C. W. Doyle,
American Federation of Labor.
By (Signed) Leo F. Flynn.

This proviso attached to and made a part of this agreement provides that the undersigned members of the Newsboys' Union No. 15834 subscribed to said agreement, and to the dues in the form of corner assessments from time to time to meet changed conditions.

APPENDIX "F"

(From Issue of Editor and Publisher June 22, 1940)

3 CLEVELAND DAILIES ABANDON STREET SALES

News, Press and Plain Dealer Take Action in Second Week of Corner News Sellers Strike

Cleveland, O., June 19—The deadlock in the strike of corner news sellers against the News, Press and Plain Dealer tightened in its second week as publishers of the three papers announced indefinite abandonment of all street sales. The action was believed the first of its kind in a large city.

Charges of "lockout" were raised and violence continued with new intensity following the announcement Tuesday. The statement, issued by Stewart Hooker, secretary of the Cleveland Newspaper Publishers Association, said:

"Each of the three daily newspapers has decided upon a change of policy with regard to distribution and sale of newspapers. Street sales have been discontinued and the following notice has been forwarded to all street vendors:

NOTICE TO VENDORS

"This is to advise you that (name of newspaper) has changed its policy in the distribution and sale of its papers. This paper has decided to discontinue sales by street vendors. All distribution will henceforth be made through home delivery carriers, stores and merchants who have for many years past carried the larger part of retail sales.

"We regret to advise that this change of policy terminates the arrangement under which you have been selling. Should this newspaper ever decide to return to the policy of street vendor sales, we will so notify you and again offer you the opportunity to resell our papers."

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Phillip Schoenberg, attorney for the unaffiliated Cleveland Newsboys' Union which called corner news sellers out on strike June 10, said the action of the publishers had converted the dispute into a lockout. "This maneuver," Mr. Schoenberg said, "is nothing less than a ruse to destroy the union."

Informed of the publishers' action at a meeting Monday night, union members voted to "continue the fight and protect our rights." Meanwhile, unemployment compensation claims for the full 16 weeks' period have been filed in behalf of each striker.

SEEK NLRB CHARGES

Efforts of the union to bring charges against the papers before the National Labor Relations Board met with postponements this week. Hearing on a charge that the papers had refused to bargain with the Newspaper Home Deliverers Association, an affiliate, was postponed by Oscar S. Smith, NLRB regional director, because of failure of the union to produce signed membership cards as proof of the union's authority to represent carriers (the union claims 7,000 of the city's 10,000 carriers as members). Mr. Schoenberg said the cards were being obtained this week.

On Wednesday Mr. Schoenberg said that the publisher's announcement to discontinue street sales would result in the filing of similar charges in behalf of corner vendors.

Vandalism grew in all parts of the city following the announcement. A restaurant counterman was kicked and beaten into unconsciousness by three men who objected to the restaurant's sale of copies of the Plain Dealer. Police have arrested more than 60 persons on charges of malicious destruction and disorderly conduct. Picketing of the three newspapers and of many stores selling the papers, continued this week.

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The strike, probably the largest of its kind, represents one of the few occasions when all big daily newspapers of a major city have been involved simultaneously. The union in attempting to bargain for home delivery carriers has asked that carriers' pay be raised from seven-eighths of a cent to a cent per paper. The publishers contend that carriers are minors covered by individual contracts and are therefore, "none of the union's business."

Support for the union in the strike has been voted both by the Cleveland Federation of Labor, AFL subsidiary, and the Cleveland Industrial Union Council of the CIO. The newsboys' union is affiliated with neither organization.

(*Issue of Sept.* 4, 1940)

STRIKERS SELL WEEKLY

Cleveland, Sept. 2—Members of the Cleveland Newsboys' Union, which struck three months ago against the Cleveland Press, News, and Plain Dealer, are selling the Cleveland Sun, a new weekly paper, which made its appearance Saturday, Aug. 17th, on downtown street corners. The first issue of the paper included an article exposing the "real story" of the newsboys' strike, written by Philip Schoenberg, attorney for the union. Listed as publisher of the paper is J. D. Peltz, a Cleveland man whose labor troubles forced him out as manager of a food market in East Cleveland, and who was later owner of a used car business which the Cleveland Better Business Bureau charged used illegal and unethical business methods.

APPENDIX "G"

MEMORANDUM OF AGREEMENT between BULLETIN COMPANY, THE PHILADELPHIA INQUIRER CO., PUBLIC LEDGER, INC., and PHILADELPHIA RECORD COMPANY; and PHILADELPHIA NEWSPAPER CARRIERS UNION LOCAL No. 20442, affiliated with the American Federation of Labor; all of the City of Philadelphia:

1. The parties recognize that a one-third spread between the wholesale and the retail price of daily newspapers for the purpose of single-copy sales on the streets is fair, and in recognition of this principle the companies will establish, beginning May 9, 1939, as the wholesale price of the daily newspapers for the purpose of single-copy sales on the streets the rate of $2.00 per one hundred copies, provided that the established retail price of the said daily newspapers remains at 3c.

2. Publishers' representatives will confer with newsboys' representatives to eliminate competition with cornermen by floaters, rovers and bootjacks, on a basis not substantially to decrease newspaper sales, and to give preference to newsboys covering corners six nights a week in the event they desire to sell Sunday bulldog editions.

3. Publishers' representatives will confer with newsboys' representatives from time to time as the occasion may warrant for the disposition of other complaints and grievances and the more effective sale and distribution of newspapers.

4. In the event of vacancies on corners where papers are sold or are to be sold the companies will recognize the priniciple of the so-called "preferential shop"—that is to say, if more than one person is being considered for the

vacancy, of equal ability and claim to the corner, preference will be given to the person suggested by the union; in every case, however, the individual suggested must be satisfactory to the publisher or publishers involved.

5. The union agrees that its members will push the sale of all Philadelphia newspapers and, where stands are used, will give prominence to these papers on such stands.

6. Corner men engaged in the daily sale (except Saturday night) of the so-called bulldog edition of the morning newspapers will receive as a "cut" or expense allowance the minimum sum of 50c each daily from each morning newspaper publisher, this "cut" or expense allowance provision to be effective from December 6, 1938. Corner men who were paid 50c or more before the date of this Memorandum will continue to receive such "cut" or expense allowance from each such publisher without change.

7. The wholesale price of the Sunday Inquirer and of the Sunday Record shall remain at 8c for a period of two years from December 6, 1938, provided that the established retail price of said Sunday newspapers remains at 10c.

8. The signing of this Memorandum is not to be construed as indicating that corner men are employees of companies.

9. This agreement shall be in force until and including May 9, 1942.

Bulletin Company
By .....
The Philadelphia Inquirer Co.
By .....
Public Ledger, Inc.
By .....
Philadelphia Record Company
By .....

Appendix "H"

Philadelphia Newspaper Carriers Union, Local No. 20442.
By .....
Business Agent

.....
President

.....
Financial Sec'y.

APPENDIX "H"

"(1) *Nature and Functions of Newspapers Preclude their Classification as 'tangible personal property' under the Act.* (Brief for Intervening Publishers, pages 3-10.)

"For more than four hundred years the newspaper has been the most important agency of mass communication known to man. Only recently, with the phenomenal rise of radio broadcasting, has any other agency of mass communication been developed even approaching the news paper in importance. With its intricate network of sensitory nerves, the newspaper gathers news and intelligence from every part of the globe and discloses it to the public. It furnishes vital information regarding the public and business affairs of the people. It furnishes an open forum for discussion. It interprets the desires and ideals of the people.

"Not only does the newspaper furnish to its readers the wealth of intelligence and information in its news columns, but it also furnishes a valuable commercial service, as well, through its advertisements. To a man out of work, the best news in the morning paper may

be a want-ad offering him a job. To persons about to purchase clothes, furniture, or an automobile, the best news in the morning paper may be the advertisements telling them where these may be purchased at reasonable prices. These people are not assisted in their problems by two or three cents' worth of tangible personal property; they are assisted by the advertising service the newspaper furnishes its advertisers and its readers. The newspaper publisher brings together employer and employee, merchant and customer, and thus performs a valuable service to both.

"While the newspaper is, presently, the most important agency for the dissemination of news and information, there are many services engaged in furnishing news and advertising to the public. Among the many mediums, the following might be mentioned: Radio, outdoor signs, billboards, bulletin boards, street-car signs, weekly newsletters, such as the Kiplinger Washington letter, ticker services and newsreels. All these services are concerned in distributing to the public the latest news and advertising. Whether the public gets this information from one of these services or from the newspaper, in no instance is it concerned with acquiring tangible personal property. The public is concerned with acquiring information, the newspaper and these other services are solely concerned in distributing information, and no one of them is selling or dealing in tangible personal property.

"When one subscribes to a newspaper, he intends to buy a news service, and the content of quality of that service is what determines his choice of newspaper. No one ever subscribed to a newspaper because of the grade of paper, the character of the type, or the color of the ink with which it was printed. No subscriber bargains for a newspaper with a certain number of pages. Why is this? It is because he is not buying paper. He is

buying news, and news is an intangible that cannot be measured by pages.

"(2) *Newspaper Publishers and Distributors Commonly Considered Supplies of Service, Rather than Retailers of Tangible Personal Property.*

(Brief for Intervening Publishers, pages 10-17.)

"The class described in this statute is well understood by the business world and by people in general. It includes, in the common and popular conception, merchants, jobbers, retail traders, and persons generally engaged in the business of selling goods and merchandise as those terms are generally understood.

"The only conceivable tangible property transferred to a purchaser of a newspaper is the paper and ink. The general public does not think of a newspaper publisher or distributor as a retailer of paper and ink, as such. The general public thinks of the newspaper publisher and distributor as being engaged in the business of disseminating news and information. The purchaser of a newspaper opens it with the same desire that causes him to tune in on a radio newscast or to look at a ticker tape. He wants and receives news and information and that is what he pays for. The business of the publisher and the distributor is to furnish this news and information and they are paid for performing that function. Paper and ink, commercially valueless, are transferred only as an incident to the transmission of this news and information.

"Popular understanding that newspapers are not ordinary tangible goods usually dealt in by retailers is reflected by the almost unanimous holdings of the courts that the business of publishing a newspaper is not 'manufacturing.'

"(4) *Newspaper Distributors an Integral Part of Newspaper Publishing Business.*

"Only a few newspaper publishers distribute all of their newspapers directly to their readers. Almost without exception, the publishers of large and small newspapers, alike, employ independent distributing agencies as indispensable arms of their circulation department. Inasmuch as these independent distributing agencies deliver a particular newspaper to the reader upon the payment by the reader of two or three cents, it might conceivably be suggested that, although the newspaper publisher is engaged solely in a service occupation, the newsboy or newsstand operator is merely a retailer or a merchant making a sale of tangible personal property. *Such a suggestion, of course, invites approval of an anomalous and ridiculous situation in which a single transaction (the delivery of a newspaper to a reader), if performed by the newspaper publisher directly, would constitute the rendition of a service, but would constitute the sale of personal property at retail, if performed by a newsboy. In addition, such a suggestion completely ignores the integral part of newspaper distributors in the dissemination of news.*

"The fundamental relationship in connection with a newspaper is the relationship between the publisher and the reader. The publisher laboriously gathers, correlates, and prints news items from all over the world and the reader pays for this news and information. To make it easily and speedily accessible to the reader, various methods of distribution through intermediaries have been developed. *In each case the choice of intermediary has been dictated by the pressing necessity for the utmost speed in furnishing an extremely perishable intangible to the public.* Such intermediaries, variously called distributors, carriers, newsboys, and newsstand

operators, are the ones who actually 'place the daily events of the world at the breakfast table of millions.' It avails little, after a newspaper is printed, if it is not readily accessible to the public for whom it was intended. The intimate relationship between the publication and the distribution of newspapers is pointedly recognized in the case of *Lovell v. Griffin* (1937), 303 U. S. 444, holding that the freedom of the press guaranty was violated by an ordinance forbidding the distribution of printed material without a license. The court said at page 452:

> "'The ordinance cannot be saved because it relates to distribution and not to publication. "*Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.*"' (Italics supplied)

"*The newsboy provides the indispensable link in the dissemination of news without which the service rendered by the newspaper would be almost entirely ineffective.* The function of the newsboy in disseminating news and intelligence is demonstrated graphically by the case of *Wilson v. McGill*, 42 D. & C. (Pa.) 74 (1940, Court of Common Pleas, Philadelphia County), in which an adjoining property owner sought to enjoin the maintenance of a newsstand on the sidewalk. The court said, in part:

> "'It is readily apparent that under modern conditions newspapers are more than a public convenience; they are a necessity. * * * Democracy, so much dependent upon a well and quickly informed public opinion, cannot be expected to survive without the organized publication and the speedy and unhampered distribution of news, protected by the constitutional doctrine of freedom of the press. "Liberty of circulating is as essential to that freedom as

liberty of publishing; indeed, without the circulation, the publication would be of little value.'" *Lovell v. City of Griffin*, 303 U. S. 444 (1938), quoting from *Ex parte Jackson*, 96 U. S. 727.

"'The circulation of newspapers in our great cities through newsstands on commercial corners has become a well established custom, meeting an urgent public need. It is a fact of common knowledge and a proper subject of judicial notice. As newspapers have become more and more vital to the democratic process, the reading public has grown enormously. With the rapid growth in the speed of communication throughout the world, the number of daily editions has steadily increased. *In this constantly growing development in the dissemination of news, the newsboy and his corner newsstand have achieved a definite and essential place.*' (Italics supplied.)

"In like manner, the Supreme Court of Kansas held, in the case of *State v. Needham* (1931), 4 Pac. (2) 464, that the distribution of newspapers was a 'work of necessity' under a statute prohibiting any labor on Sunday except 'works of necessity or charity.' The court said, in part, at page 465:

"'At this stage of the world's progress, with the means of gathering news that are available, we have grown to expect far more expeditious service on the part of newspapers of the state than was received during the days when the statute in question was passed. * * * We are becoming aware more than ever of the effect political and economic upheavals in countries on the other side of the globe have upon our business affairs. When we know that the King of Spain is about to abdicate, we expect to be able to read the details of it the next morning when the paper

is thrown on our porch. * * * In order to bring us this information, the news gathering agencies are far flung to the uttermost ends of the earth. * * *

* * * the metropolitan Sunday newspaper is a necessity and the work of distributing it necessary work.'

"It has been shown heretofore that the publication and distribution of newspapers by the publisher are not sales of 'tangible personal property' under the Retailers' Occupation Tax Act, but constitute the rendition of a service. It has likewise been shown that the reader intends to and does buy a service. A service being delivered by the publisher to the reader cannot become 'tangible personal property' simply because it passes through the hands of an intermediary. It is submitted that the whole sequence of publishing and distributing is one function—that of gathering and disseminating news and information to the public.

"The publisher, at the beginning of the successive steps in the distributive system may (and the great majority of publishers actually do) sell their newspapers to the newsstand, carriers or wholesaler, as the case may be, and these, in turn, may and do sell the newspapers to the next person in the system or to the ultimate reader, but that does not alter the fact that the subject matter sold is *news* rather than tangible personal property. The publisher is not engaged in the sale of tangible personal property. The reader is not purchasing tangible personal property. It follows that a particular method of distribution of a service cannot change the service into tangible personal property in the hands of the distributor or carrier, and then change it back again from tangible personal property to a service when it comes to the hands of the reader. The reader receives a service, regardless of what method is used to deliver it to him. *The methods of distribution are*

merely different types of conduits to facilitate the smooth and prompt flow of this service from the publisher to the reader.

"The newsboy commonly returns and receives credit for all copies of an earlier edition which are unsold when a later edition, containing more recent news and information, appears. The papers returned are physically intact and of the same quality as those later received. They are returned by the newsboy and accepted for credit by the publisher because they have lost all of their commercial value and cannot be sold. Inasmuch as the paper and ink involved do not deteriorate in the short period between editions, the decline in commercial value of the old edition can only be explained by the fresh news and information contained in the new edition. Since the old papers cannot be sold and since the new papers, of the same physical quality and makeup, can be and are sold, *the conclusion is inescapable that the newsboy is really selling intangible news and not the tangible paper and ink.* The paper is merely a convenient means of transferring the news and information he has for sale. 'The paper is a mere incident; the skilled service is that which is required.' (*Burgess Company v. Ames* (1935) 359 Ill. 427.)

"The sales tax laws of twenty-two jurisdictions in the United States outside of Illinois, which have such a statute, are analyzed in Section III of this brief. It is shown there that, in twenty-one of these twenty-two jurisdictions, receipts from the distribution or sale of newspapers to the public by news distributors, carriers or newsboys, as well as by the publishers, are exempt from the sales tax either by legislative or administrative action. This almost complete unanimity of opinion in other states is, of course, not binding on the Attorney General, the courts or the administrative authorities in Illinois. *It is, however, persuasive evidence that newspaper distributors, as well as*

newspaper publishers, are commonly regarded as being engaged in the rendition of service, rather than in the sale of tangible personal property.

* * * * * * * * *

"B. THE ATTORNEY GENERAL ERRED IN CLASSIFYING NEWSPAPERS WITH BOOKS AND MAGAZINES.

"There is no justification either in authority or reason for the grouping of newspapers with magazines and books to determine taxability. As is shown in Part III of this brief, the distribution of newspapers is not subject to the retail sales tax in any of the other twenty-two jurisdictions having such taxes, except Kansas. In eleven of these jurisdictions, although the distribution of newspapers is not taxable, the tax is nevertheless imposed upon the sale of magazines. These jurisdictions are: *Colorado, Iowa, Louisiana, Mississippi, Missouri, North Dakota, Ohio, South Dakota, Utah, Washington,* and *Wyoming.* In no jurisdiction has the sale of books been exempted from this tax.

"The distinction which has thus been drawn in the application of the tax in these jurisdictions, between newspapers on the one hand and books and magazines on the other, simply reflects the public conception of the nature and purpose of newspapers as opposed to that of books and magazines.

"While some newspapers may at times carry articles somewhat comparable to those appearing in certain magazines and while some magazines may attempt to disseminate news, such departures from the norm do not justify the statement of the Attorney General, in paragraph 2 of his opinion, that:

"'The newspaper may be a small magazine or miniature book, differing from a magazine or book

in size, shape, binding and content. To a degree all may, and frequently do, contain identical subject matter.'

To the extent that the Attorney General attempts by these two sentences to lump the standard newspaper, the usual magazine, and the ordinary book into an indistinguishable mass, *the Attorney General flies in the face of common experience and knowledge.*

"*A newspaper is published primarily to disseminate information of passing events as they occur. The extreme perishability of news and the issuance of new editions at short intervals render unnecessary and impractical any attention to the permanence or value of the medium. As a result, the medium for the transmission of the news is almost as perishable as the news itself.* On the other hand, magazines and books ordinarily contain treatises or articles of literary or scientific value such as the purchasers desire to read and preserve for future reference. For this reason, books and magazines are customarily printed upon a better quality of paper and are bound for greater permanency. For the same reason a great deal more effort and money are expended to make the article appear beautiful and attractive.

"The buyer of a book or magazine receives an article which he can and usually does retain for months or years because of its own intrinsic value. After they have been read, books and magazines still have a definite commercial value, as is indicated by the fact that they are regularly sold at secondhand sales and in shops. A newspaper, on the other hand, becomes practically valueless and is ordinarily discarded as soon as it is read.

"Mention should also be made of other characteristics of the newspaper, distinguishing it from the magazine or book. Too much emphasis cannot be placed upon the im-

portance of the newspaper as an agency of mass communication. Magazines and books instruct and inform the public it is true, but for every magazine or book entering any home hundreds of newspapers enter. Even though the family cannot afford magazines or books, newspapers give it the news of the world. Furthermore, as is stated in Part I of this brief, the newspapers, in publishing public and official notices, act as the mouthpieces of the various governmental bodies, making known information which those bodies desire the public to receive. This service function has not been and cannot be performed by magazines or books.

"The Supreme Court of Illinois has explicitly recognized a distinction between newspapers and magazines in the case of *City of Chicago v. Rhine* (1936) 363 Ill. 619. This was a suit brought by the city to enjoin defendant from offering for sale, etc., magazines in front of 22 South Clark Street, Chicago, in violation of an ordinance which prohibited the sale of magazines and other merchandise on the streets in the loop and the Wilson Avenue district. The ordinance excepted the sale of newspapers from its operation. Defendant contended that the ordinance was unreasonably discriminatory and unconstitutional because it prohibited the sale of magazines but permitted the sale of newspapers in the restricted area. The court, in rejecting the argument, said at page 624:

> "' ' ' * ' That someone else is given the privilege of selling newspapers (a commodity not within the same class as the article the defendant was exposing for and offering for sale), did not constitute an unconstitutional discrimination against him. The classification made by the city by which daily newspapers were exempt from the operation of the ordinance was valid.'

Appendix "H"

"Accordingly, there is no factual basis for the easy assumption by the Attorney General that the distribution of newspapers must be taxed, if the sale of either books or magazines is subjected to the retailers' occupation tax. On the contrary, a careful consideration of the characteristics and function of books, magazines, and newspapers leads inescapably to the conclusion that, regardless of the decision as to the taxability of magazines and books, the distribution of newspapers is not and should not be taxable under the Retailers' Occupation Tax Act." (Brief for Intervening Petitioners in Calumet Publishing Company, et al. v. McKibbin, et al., Circuit Court, Cook County, Illinois, Nos. 41-C-3507, 41-C-5874, in Equity, March 30, 1942.)

APPENDIX "H2"

IN THE CIRCUIT COURT OF COOK COUNTY.

OPINION OF THE COURT.

State of Illinois,
County of Cook, ss.:

Calumet Publishing Company et al., Chicago Tribune et al., intervening plaintiffs,

Plaintiffs,

v.

George B. McKibbin, as Director of Finance; Warren Wright, as State Treasurer, and George F. Barrett, as Attorney General, all of the State of Illinois.

Defendants.

No. 41-C-3507.

The Interstate Company et al.

v.

George B. McKibbin.

No. 41-C-5874.

Proceedings had in the above-entitled cases, before the Hon. Harry M. Fisher, one of the judges of the Circuit Court of Cook County, on Monday, March 30, 1942, at the hour of 11 o'clock a. m.

Appendix "H2"

Present:

Messrs. Phillips & Gately, by
Mr. John E. Toomey,
appearing in behalf of plaintiffs;
Hon. George F. Barrett, Attorney General of the State of Illinois, by
Mr. Oliver H. Bovik, Assistant Attorney General,
appearing in behalf of intervening complainant;
Messrs. Kirkland, Fleming, Green, Martin & Ellis, by
Mr. Manly K. Hunt,
appearing in behalf of the Chicago Tribune, The Times, and the Chicago Sun;
Mr. Edward Woods, by
Mr. Solomon,
appearing in behalf of the Herald-American;
Mr. H. H. Scheier,
appearing for the Journal of Commerce;
Messrs. Bell, Boyd & Marshall,
appearing in behalf of Chicago Daily News;
Messrs. David & Fainman, by
Mr. Sigmund W. David,
appearing in behalf of the Interstate Company, an intervening complainant.

DECISION OF THE COURT.

The Court: * * * I shall discuss first the intervening petition of the newspapers. The point here presented is simple and calls only for the determination of the character of the business of a newspaper and its distributors with a view to ascertaining if they come within the definition of the Retailer's Occupational Tax Act as taxable occupations.

Appendix "H2"

It is the position of the plaintiffs that the publishers and distributors of newspapers render service to the public, and that the sale of the newspaper for some trifling consideration is simply incidental to the business of disseminating news and information. It is also claimed that such sales are not sales of tangible personal property within the meaning of the act; that what is in fact sold, if there is a sale, is not the paper and ink, but intelligence, information, and that these are intangibles.

The position of the defendant is that since the paper that is sold is something that can be perceived by the citizens—may be seen, felt and has body—it is tangible property, and therefore the sale of it comes within the meaning of the act.

It is hard to escape the conclusion that the publishing and selling of newspapers is primarily a service occupation; that the thing that is being sold is the gathered-up intangible material for the enlightenment or entertainment of those who purchase the newspaper and that the paper upon which the material is printed is simply the vehicle or the instrument by which the information is passed on from the publisher who gathered it to the person who seeks it.

A newspaper is a sheet of paper upon which is imprinted in intelligent form the news of the day, the utterances and offers of the advertisers, the drawings of cartoonists, the reproduction of photographs, the interpretation by way of editorial comment of the problems of the day. If some medium other than paper were to be found for the communication of that information to the readers, they would accept it and probably pay the same price for it. It is almost fantastic to argue that the reader purchases his paper simply because he can use it for wrapping purposes. The purchaser is not interested in the nature of the medium used for the conveyance of the in-

formation. What he seeks is the news or the advertisements, or whatever else of interest to him is impressed upon the paper as a visual representation of an idea or a subject matter. The paper appearing on the stand at ten o'clock in the morning will be worthless as a commodity at eleven o'clock if at that hour another edition were to appear having less paper and less ink but containing later news. After the paper is purchased and read, it is, in the terms of one of the cases cited, consigned to oblivion, and the purchaser is ready to buy another paper containing later news.

The public is anxious for information. It is interested in foreign news, domestic news; it is anxious to see an interpretation of the complicated forces which operate about us. It is anxious to ascertain where it can purchase required articles at the most reasonable prices and from the most reliable merchant. It is constantly seeking intelligence upon a variety of matters, intelligence upon the behavior of public officials, upon the action of its government—and the necessity has arisen, not suddenly but developed through the ages, for the maintenance of an institution devoted to the gathering of all that information and of presenting it to those who are interested, in an intelligent form and in the most understandable language. That institution has so progressed that the information is available to everyone who has ability to read or to hear the paper read and at a price relatively insignificant when compared with the cost of gathering that information, and preparing it for distribution.

This institution is able to survive, not by what it profits from the sales price of the newspapers, but because by reaching a large portion of the public, it has become a valuable vehicle for the distribution of information, and those who desire or stand in need of appealing to the pub-

lic use the newspapers as an advertising medium and pay for the space used.

One can become very eloquent in attempting to describe the uses to which newspapers are put in this country. They render service of such paramount value to each community that it is not at all flattering to the public to classify this great and indispensable institution as a retail business engaged in selling tangible personal property for use and consumption. The newspapers not only educate the public on contemporary events by bringing reports of the happenings throughout the world upon the table of each reader, who may assimilate the information while having his breakfast, as was so characteristically said in one of the opinions in a case cited by counsel, but it is the mirror which reflects public opinion, the universal strivings of mankind, conflicts between nations and within each nation or community. It does even more than reflect those opinions. By the selection of the news to be emphasized, by editorial comments, and by interpretations by its columnists it seeks to and often succeeds in influencing and shaping public opinion.

It is the community's watchful eye on the conduct of its officers; it evaluates their work, criticizes and exposes their shortcomings. In short, it is performing a variety of functions without which no democracy can survive—at any rate survive with any degree of intellectual participation in the affairs of government by the general citizenship.

To say that an institution performing such functions is nevertheless simply engaged in the business of selling tangible personal property at retail involves the deliberate disregard of the invaluable services the rendering of which is the primary purpose of those who are engaged in that business and which alone gives it life and guarantees its survival.

Appendix "H2"

As a matter of fact, to say that the newspaper is a business which might be included under any such a general definition as is contained in the Retailer's Occupational Act is to ignore the history of nearly four hundred years replete with struggles, and calculated to take the newspaper business out of the class of ordinary manufacturing or mercantile enterprises. It would mean that we ignore the fact that by our constitutions and laws we have set aside the publication of newspapers as a unique and distinct enterprise, with special guarantees of freedom which we consider of the essence of democratic living.

It is not a manufacturing enterprise devoted to profit-making even though it may be a very profitable enterprise; it is not a mercantile establishment simply devoted to the purchase of a unit at one price and selling it at another. It is, as I have already indicated, an institution, unique, in a class by itself, established for the purpose of rendering those public services which I have already briefly described. In the days of illiteracy the printing of one copy, exposed either on the wall of some public place for those men who could read to peruse it, could and did serve the full purpose of disseminating news; but with the advance of literacy amongst the millions, they have become anxious to know what is happening. To meet the demand for knowledge, the incredible machinery has been developed which reproduces millions of copies of the record of the gathered news which is conveniently distributed amongst all who desire to peruse it at a cost not much greater than the mere cost of distribution.

If the legislature intended that such an enterprise be taxed, it would have specifically provided for it in the act. I would not be very complimentary to the legislature if I concluded that in passing the act as it did it did so either in ignorance of the nature and distinct character of the newspaper business, or, by deliberately ignor-

ing the nature of it, intended by the mere use of the general term, "engaged in the retail business," or similar words to include this enterprise. It must be kept in mind that it is not a sales tax with which we are dealing. It is an occupation tax, and the statute is of the type that must be strictly construed so far as inclusion of enterprises is concerned. Even if the rule of strict construction were not to be applied—taking cognizance of the character of the enterprise here involved, the facts of which are admitted as pleaded in the complaint by the motion to strike—the court would still feel that under a liberal construction the words of the statute are not broad enough to include newspapers within its orbit.

There is yet an additional but more technical reason why I am forced to the conclusion that the enterprise here in question does not come within the definition of a retail merchant as contained in the act. You will recall that the definition is that the tax is assessed against all persons engaged in the business of selling tangible personal property *for use or consumption* and not for resale, and, as I have indicated in cases previously decided here, this statute is unique in this respect—it does not assess a tax upon the business or occupation of selling commodities; it is limited to those who are engaged in the occupation of selling commodities *for specific purposes*, namely: use or consumption.

Before a court can say that a prospective taxpayer comes within the act, it must in each case—in fact, in each sale—ascertain the purpose of the sale. In other words, it must go beyond the person taxed and inquire as to the use to which the purchaser of the commodity puts it—a rather anomalous situation, but we have to deal with it, and so in each case the question is always present, "Was this sale made for use or consumption?"

Now, of course, no one will argue for a moment that a newspaper is consumed by the reader. When he is through reading it, it remains unchanged; not a particle of it is lost; and "consumption," within the meaning of the act, contemplates an actual destruction of the thing. It has to disappear or, at least, vitally change its original form. It is even questionable whether there is a consumption if the commodity was used so that its original character is entirely destroyed, but the elements of which it is made up remain incorporated in some other commodity; but certainly where no particle of the commodity in question is changed or lost and the whole would be useful to another person for the very purpose to which it was originally adapted, no one can contend that there was a consumption or that the paper was purchased for consumption. Now, then, was there a "use" of the paper by the reader within the meaning of the act? Our courts have defined the word "use" as meaning a long continued possession and employment of the thing to the purpose to which it was originally adapted, and not merely a temporary or casual use of it. Could the mere reading of a newspaper possibly come within that definition?

Mr. Bovik: I think so.

The Court: Long continued possession and employment and not a mere temporary or casual use? I cannot possibly see how it could come within that definition.

The answer to it all is that it is not purchased for use or consumption. It is purchased simply for the purpose of gathering from it by the visual and auditory senses the intelligence contained therein. So far as the paper itself is concerned, that which the defendant claims is tangible, it is not purchased for use at all. That paper without the impressions upon it, no one would have

Without the impressions which convey intelligence or ideas, none would pay anything for the paper. The nearest one can come to contending that a purchaser of a newspaper buys if for use, is that he intends using it as wrapping paper. The Attorney General so argued. But this is rather too fantastic to require further discussion. Moreover it may seriously be questioned whether the transaction called in common parlance "the sale of a newspaper" is a sale in the legal sense. An essential element in legal sales is the transfer of title in the commodity sold without a residuum of control of its use remaining in the seller. Can the purchaser of the news make unrestricted use of it? Of course not. The Associated Press and other newsgathering agencies would go out of business if every purchaser of a newspaper could reprint its contents and distribute it. No title passes to the printed material which alone constitutes the consideration for the payment of the purchase price * * *

It is ordered that a copy of the above statement of the court's reasons in arriving at its conclusions be filed and made a part of the record in this case.

State of Illinois,
County of Cook, ss.:

I, John E. Conroy, Clerk of the Circuit Court, of Cook County, and the keeper of records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain Report of Proceedings filed in this office on the 8th day of July, A. D. 1942, in a certain cause lately pending in said Court, on the Chancery side thereof, between Calumet Publishing Company et al., Plaintiff, and George B. McKibbin et al., Defendant.

Appendix "H2"

In witness whereof, I have hereunto set my
(Seal) hand and affixed the Seal of said Court, at Chicago, in said County, this 14th day of April, 1943.

JOHN E. CONROY,
Clerk.

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IN THE

Supreme Court of the United States

Office - Supreme Court, U. S.
FILED
MAY 15 1944
CHARLES ELMORE CROPLEY
CLERK

October Term, 1943.

No. 336

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

HEARST PUBLICATIONS, INCORPORATED,

Respondent.

PETITION FOR REHEARING.

JOHN M. HALL,
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OSCAR LAWLER,
MARCUS MATTSON,
A. LAURENCE MITCHELL,
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IN THE

Supreme Court of the United States

October Term, 1943.
No. 336

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

HEARST PUBLICATIONS, INCORPORATED,

Respondent.

PETITION FOR REHEARING.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Hearst Publications, Incorporated, respondent herein (Case No. 336), respectfully petitions for a rehearing upon the following grounds:

1. The Effect of the Court's Decision Is to Leave the Standard Prescribed by Congress in the National Labor Relations Act Vague and Indefinite, Thus Permitting the Exercise of Law-making Power by an Administrative Body in Violation of the Separation of Powers Doctrine.

The separation of powers doctrine[1] forbids one department of our national government from exercising the constitutional powers of another department. Under the

[1] *Springer v. Philippine Islands*, 277 U. S. 189, 201; *Panama Refining Co. v. Ryan*, 293 U. S. 388, 421.

Constitution the lawmaking power is vested in Congress alone and may not be exercised by another department. But Congress may delegate to an executive officer or board, as its agent, the duty of "filling up the details" of Congressional legislation.[2]

However, valid delegation must prescribe a *standard* for the guidance and limitation of the executive officer or board.[3] Delegation without such *standard* would permit the executive officer or board to legislate in the broad sense contrary to the constitutional scheme vesting in Congress the lawmaking power.[4]

Likewise, delegation without a *definite and certain standard* would permit the executive officer or board to legislate in the broad sense contrary to such constitutional scheme. Hence, an act of Congress which prescribes an indefinite or uncertain standard will be held unconstitutional.[5]

It is respectfully urged that the Court's decision leaves the meaning of the *standard* set by Congress in the National Labor Relations Act (i. e., the word "employee")

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[2]*United States v. Grimaud*, 220 U. S. 506, 517.

[3]As said by Mr. Justice Reed in *United States v. Rock Royal Co-operative, Inc.*, 307 U. S. 533, 574:

> "In dealing with legislation involving questions of economic adjustment, each enactment must be considered to determine whether it states the purpose which the Congress seeks to accomplish *and the standards by which that purpose is to be worked out with sufficient exactness to enable those affected to understand these limits.*"

[4]*Panama Refining Co. v. Ryan*, 293 U. S. 388, 414, 418, 420, 421, is an outstanding authority on this point. There, Sec. 9(c) of the N. I. R. A. was held unconstitutional because it delegated to the President authority to prohibit the transportation of so-called "hot" oil in interstate commerce *without prescribing a sufficient standard to guide and limit the exercise of such delegated power.*

[5]*Panama Refining Co. v. Ryan*, 293 U. S. 388, 420; *Schechter Poultry Corp. v. United States*, 295 U. S. 495.

entirely vague and uncertain. The decision furnishes no criterion by which the facts coming before the Board may be tested for the purpose of determining whether the Board has jurisdiction. Thus, the Board is permitted to fix the limits of its delegated power. Thus, the Board is permitted to exercise power which only Congress may constitutionally exercise.

2. The Effect of the Court's Decision Is to Accord Administrative Finality to the Board's Interpretation of an Act of Congress.

No finality should be given to an interpretation by an administrative body of the language of an act of Congress *unless such act itself expressly delegates that determination to the administrative body.* This distinction is disclosed by a comparison of *Shields v. Utah Idaho R. Co.*, 305 U. S. 177, and *United States v. Idaho*, 298 U. S. 105.

The decision in the instant case declares that in determining the meaning of the word "employee" the "reviewing court's function is limited."[6]

It is respectfully urged that no such limitation should be imposed on a federal court's power and duty to interpret an act of Congress, *in the absence of an express delegation by Congress to the administrative body* of such judicial power. No such express delegation will be found in the National Labor Relations Act.[7]

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[6]Opinion, page 15.

[7]There was such express delegation in the Railway Labor Act (45 U. S. C. A., sec. 151), under which *Shields v. Utah Idaho R. Co.*, 305 U. S. 177, was decided, and under the Bituminous Coal Act (15 U. S. C. A., secs. 833, 834) under which *Gray v. Powell*, 314 U. S. 402, was decided.

3. The Court's Decision mistakenly assumes That Its Interpretation of the Word "Employee" Is the Same Interpretation as That Which the Board Employed.

Reference to the Board's decision of January 9, 1941 (28 N. L. R. B., p. 1006 at 1022, 1023) will disclose that the Board based its conclusions upon an interpretation of the word "employee" *according to the conventionally accepted "control test."* Thus the Board stated: ". . . we are of the opinion that the Companies have the right to exercise, and do exercise, such control and direction over the manner and means in which the newsboys perform their selling activities as establishes the relationship of employer and employee for the purposes of the Act." This was the theory upon which evidence was presented to the Board. The Board did not adopt the interpretation of "employee" prescribed by the Court's decision.

Since the Board professed to employ the "control test" in determining the meaning of the word "employee," that test should have been applied upon a review of its decision. The Board's action must be judged by the standard which the Board itself has invoked; its action must be measured by what it did, not by what it might have done. This, it is respectfully submitted, is the rule of review announced in *Securities Comm'n v. Chenery Corp.*, 318 U. S. 80, 89, 93, 94.

4. The Findings of the Board Were Inadequate to Warrant Its Conclusion That "Employment" Existed, if the Word "Employee" be Given the Meaning Ascribed to It by the Court's Decision.

The Act required findings.[8] To be valid the Board's decision must have been supported by basic findings.

If, as indicated in the decision,[9] "employment" is to be made to depend upon the "economic facts," then it is respectfully urged that there is an absence of findings by the Board disclosing such "economic facts."

For example, the decision declares that "it is not necessary in this case to make a completely definitive limitation around the term 'employee'"; that that task has been "assigned primarily" to the Board; and that the Board's "everyday experience . . . gives it familiarity with the circumstances and backgrounds of employment relationships in various industries, with the abilities and needs of the workers for self organization and collective action, and with the adaptability of collective bargaining for the peaceful settlement of their disputes with their employers."[10] Certainly there is little or nothing of these matters stated in the Board's findings. As pointed out above (point 3) the Board professed to employ the conventionally

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[8]Section 10(c) of the Act provides that "if upon all the testimony . . . the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board *shall state its findings of fact* . . ."

[9]Opinion, page 12.

[10]Opinion, page 14.

accepted "control test." Hence it was natural that its findings should reflect an attempt to apply the "control test"—not the economic fact rationale of the Court's decision.

Respectfully submitted,

JOHN M. HALL,
Attorney for Respondent and Petitioner, Hearst Publications, Incorporated.

OSCAR LAWLER,
MARCUS MATTSON,
A. LAURENCE MITCHELL,
Of Counsel.

I, counsel for petitioner herein, certify that the foregoing petition is presented in good faith and not for purposes of delay.

May 10, 1944.

JOHN M. HALL.

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IN THE

Supreme Court of the United States

October Term, 1943.

No. 337.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

STOCKHOLDERS PUBLISHING COMPANY, INC.,

Respondent.

Petition of Respondent Stockholders Publishing Company, Inc. for Rehearing.

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IN THE

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NATIONAL LABOR RELATIONS BOARD,

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vs.

STOCKHOLDERS PUBLISHING COMPANY, INC.,

Respondent.

PETITION FOR REHEARING.

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now, the Stockholders Publishing Company, Inc., respondent in the above entitled cause, and presents this, its Petition for Rehearing of such cause and in support thereof respectfully shows:

Grounds for Rehearing.

1. There is a division of opinion among the Justices.

2. The Court has apparently misunderstood or misapprehended the argument of this respondent respecting the value of State Court decisions in interpreting the Wagner Act.

3. Though departing in its decision from the well established concept of the word "employee," the Court has failed to suggest a definite test for the determination of the employer-employee relationship, and its pronouncements tend to further confuse rather than clarify this most important problem.

4. By its broad pronouncements in the decision, the Court has in effect abrogated the effectual right of appeal from an order by an administrative body.

Ground 1

Mr. Justice Roberts in his dissenting opinion, in commenting upon the intent of Congress in defining the word "employee," stated in effect that it was clear that Congress intended that the provisions of the Act were, as respondent contends, intended to extend only "to those who, as a result of decades of tradition which had become part of the common understanding of our people, bear the named relationship."[1]

It is respectfully urged that this is a doctrine from which the Court should not depart.

Ground 2

It appears to be assumed in the Opinion[2] that this or all respondents have advanced the suggestion or argued that State laws should be a controlling factor in determining the employer-employee relationship.

This respondent respectfully submits that it advanced no such contention in its brief on file herein or in its argu-

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[1]Opinion, page 18.

[2]Opinion, pages 8 and 9.

ment. Under the title, in respondent's brief "There is no Substantial Evidence Showing Control by Respondent Over the Newsboys," it is true respondent referred to a few leading State cases upon the theory that they might merely be of aid in determining the legal, conventional and common law meaning of the word "employee."

In its brief under the title "The Term 'Employee' as Used in this Act Should be Given its Legal and Conventional Meaning," no State Court authorities were cited; nor were any State authorities cited in support of the proposition (Point 1(e), Respondent's Brief, page 38) that the determination of the meaning of the word "employee" was a legal question and a function of the Court and not of an administrative body—on the contrary all cited cases were federal authorities.

It is therefore respectfully submitted that it would appear from pages 8 and 9 of the Opinion, that this Court misapprehended respondent's argument in this respect.

Ground 3

It is respectfully pointed out that no satisfactory solution is offered to the question posed by the Opinion.[3]

In further discussing the question quoted in the footnote, the Court states[4] as follows:

> "Myriad forms of service relationship, with infinite and subtle variations in the terms of employment, blanket the nation's economy. Some are within this

[3]Opinion, page 10. "The question comes down therefore to how much was included of the intermediate region between what is clearly and unequivocally 'employment,' by any appropriate test, and what is as clearly entrepreneurial enterprises and not employment."

[4]Opinion, page 11.

Act, others beyond its coverage. Large numbers will fall clearly on one side or on the other, by whatever test may be applied. But intermediate there will be many, the incidents of whose employment partake in part of the one group, in part of the other, in varying proportions of weight. And consequently the legal pendulum, for purposes of applying the statute, may swing one way or the other, depending upon the weight of this balance and its relation to the special purpose at hand."

It is respectfully and earnestly urged that no certain or reasonably certain guide is thereby provided for the future determination of the relationship of employer and employee if we are to depart from the well established meaning of the word "employee" as developed by long-time usage, custom and common law.

A test which is indefinite or uncertain actually amounts to no test at all.[5]

Ground 4

Respondent has earnestly contended and respectfully continues to earnestly contend, that the question as to who is or is not an employee under the Act is a question of interpretation of the Act and is, therefore, a judi-

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[5] *Champlin Rfg. Co. v. Commission*, 286 U. S. 210, at 243:

"It is not the penalty itself that is invalid but the exaction of obedience to a rule or standard that is so vague and indefinite as to be really no rule or standard at all."

Citing various cases, including:

Small Co. v. Am. Sugar Rfg. Co., 267 U. S. at 239-241;
U. S. v. Rock Royal Cooperative, Inc., 307 U. S. 553. Opinion by Mr. Justice Reed.

cial and not an administrative function. Ergo, that such function should not be circumscribed by the findings of the Board or administrative body. Only when the language of the Congressional Act expressly delegates the determination of a question to an administrative body should the findings of such body be final.[6]

While the Court in its Opinion adopts a contrary view expressed in the following language (Opinion, pp. 14, 15):

> "Hence in reviewing the Board's ultimate conclusions, it is not the court's function to substitute its own inferences of fact for the Board's, when the latter have support in the record."

it is most respectfully submitted that the language just quoted if applied literally will result practically in abrogating the effectual right of appeal. This for the reason that it is quite unlikely that a record coming before this Court on appeal from an administrative body would ever fail to support *to some extent at least* the findings of such administrative body. Hence an appeal might become a mere gesture.

It is respectfully submitted that the findings of an administrative body should be supported by substantial and persuasive evidence and that such findings should not be final merely because they have "support in the record."

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[6] *Shields v. Idaho Utah Railroad Company*, 305 U. S. 117.
The Railway Labor Act, 45 U. S. C. A., Sec. 151, contains such expressed delegation of authority which was the controlling factor in the *Shields* case.

Wherefore, upon the foregoing grounds, it is respectfully urged that this Petition for Rehearing be granted and that the judgment of this Honorable Court upon further consideration be reversed.

Respectfully submitted,

L. B. BINFORD,

Attorney for Respondent, Stockholders Publishing Company, Inc.

Certificate of Counsel.

I, counsel for Petitioners, certify that the foregoing petition is presented in good faith and not for the purpose of delay and in our opinion is well taken.

L. B. BINFORD.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 338.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

HEARST PUBLICATIONS, INCORPORATED,

Respondent.

PETITION FOR REHEARING.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 338.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

HEARST PUBLICATIONS, INCORPORATED,

Respondent.

PETITION FOR REHEARING.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Hearst Publications, Incorporated, Respondent herein (Case No. 338), respectfully petitions for a rehearing upon the following grounds:

1. **This Court Has Departed From Precedents Established by the Federal Courts for the Interpretation of Federal Social Legislation and Has Failed to Establish Any Rule or Guide to Replace Them.**

"The prophecies of what the Courts will do in fact, and nothing more pretentious, are what I mean by the law."

Mr. Justice Holmes.

> "Unless the assumption is substantially true that cases will be disposed of by application of known principles and previously disclosed courses of reasoning, our common-law processes would become the most intolerable kind of *ex post facto* judicial law making."
>
> *Mr. Justice Jackson.*

This Court's opinion belabors the point, "Thence 'technical concepts pertinent to an employer's legal responsibility to third persons for the act of his servants,' have been rejected in various applications of this Act there (citing authorities) and in other federal courts (citing authorities)."

Respondent urged in its brief that his Court follow the rule that Congress must have intended to use the word employee in its ordinary, accepted and conventional sense. Respondent cited many federal court cases construing the Social Security Act, the Federal Employers' Liability Act, the Fair Labor Standards Act and the Federal Safety Appliance Act,[1] all acts of national scope and all holding that an "employee" under those acts is "one who meets the test of the more or less established concept of the legal relationship of employer and employee."

The supposed difficulties of administration adverted to by the Court[2] patently do not embarrass the administration of the Federal Acts above named, even though administration is guided by the many well reasoned opinions of the Federal District and Circuit Courts cited. The au-

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[1]Respondent's Brief, pp. 37-40.

[2]Opinion, p. 8.

thority of all these cases must now be deemed questionable. Yet nothing is established by this Court's opinion to take their place, except the nebulous, uncertain and variable opinion of a supposed expert Board that a particular status is one of employment because "underlying economic facts" make it so.

The average lawyer, seeking to advise his client, must gain only bewilderment and confusion by comparing the facts in this case with those of the *Houston Chronicle* case[3] decided by the Board the same day. Diligent inquiry has disclosed no injustice or maladministration worked by geographically variant interpretations of the above named Federal Statutes by Federal Courts, but, if the Board had some other basis than geographical situs for its ruling in the *Houston Chronicle* case, we are unable to locate it in the record. Mindful of the Board's expert infallibility, the inquiring lawyer can only conclude that in Texas, or at least Houston, all the conditions of the relation did not require protection, and that there the economic facts of the relation disclosed that entrepreneurial enterprise still flourished in the news vending business.

But whatever the reasons, if any, actuating the Board, no amount of legal discussion of the national uniformity intended by Congress can disguise or conceal the undeniable fact that this Board of experts, within the space of a single day, reached diametrically opposing conclusions on two practically indistinguishable sets of facts. This embarrassingly ubiquitous circumstance, together with the excellent record of the Federal Courts of the United States for intelligent, logical and precedential uni-

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[3]28 N. L. R. B. 1043.

formity of interpretation of national social legislation, make an exceedingly unstable foundation upon which to erect a case for uniformity for the Board or for invidious comparison with the record of the Federal Courts.

The Board's decisions, unhampered by precedent and veered and diverted by the Board's peculiar, vagrant and day to day conceptions of economic needs belie the attributed uniformity. The two cases, one arising in Los Angeles and one in Houston, were disposed of by application of no known principles or previously disclosed courses of reasoning. *Ex post facto* administrative law making was the device used to enlarge the limit of the Board's limited jurisdiction, and the exercise of such enlarged jurisdiction was and will be governed by uncontrolled and unpredictable notions of economics.

We respectfully submit that a rehearing should be granted so that the erratic wanderings of the Board from the paths charted by the precedents above referred to may be checked and delimited.

2. The Court Has Upheld the Board's Findings of Fact Affecting a Group of 210 to 219 Vendors but Actually Based on the Testimony of Only a Select Few of the Group.

The majority opinion of the Court that "The record sustains the Board's findings . . ."[4] misconceives or overlooks the arguments of this Respondent contained on pages 55 to 92 of its brief. Because of our belief in the merit of those arguments and our consciousness of the dangers inherent in the practices of the Board, sanctified

[4]Opinion, pp. 15-16.

by that portion of the opinion above quoted, we feel impelled to re-emphasize our opinion that inferences drawn from a "spot check" of a few carefully chosen witnesses are not "substantial evidence" supporting findings affecting an entire group.

We assume, from the following language of the opinion, viz.: "Some are within this Act, others beyond its coverage. Large numbers will fall clearly on one side or on the other, by whatever test may be applied"[5] that "tests" must or may be applied to determine on which side large numbers fall. It seems self-evident that a "test" is a norm or a guide which when applied to a particular state of facts will result in a determination, in this and like cases, of the existence or nonexistence of the status of employment.

If the test be ". . . that the particular workers . . . . are subject, *as a matter of economic fact*,[6] to the evils the statute was designed to eradicate . . . ."[7] then, it seems to us, there must be evidence in the record that all of such workers are "as a matter of economic fact," subject to those evils.

If the test be ". . . when the particular situation of employment combines these characteristics so that the economic facts of the relation make it *more nearly* one of employment than of independent enterprise with respect to the ends sought to be accomplished by the legislation, those characteristics may outweigh technical legal

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[5]Opinion, p. 11.

[6]Italics here and elsewhere in this petition ours unless otherwise noted.

[7]Opinion, p. 12.

classifications for purposes unrelated to the statute's objectives and bring the relation within its protections,"[8] then there must be evidence in the record establishing the existence of these combined characteristics as to every vendor in the unit and establishing the "economic facts" of the relation of every vendor in the unit which make each such relation "more nearly one of employment."

It is clear, as hereinabove pointed out, that the majority opinion in this case does not describe or define the "test" to be used, but whatever it is, it should be, under the circumstances disclosed by this record, applied to each individual of a group not to selected "samples" thereof, without substantial or any proof that the Board sponsored "samples" are either typical or representative of the group.

We emphasize this point because of our belief that this case is, in the issue here discussed, unprecedented and the gravity and importance of the issue has been lost sight of. We say it is unprecedented because so far as diligent research has disclosed, this is the first case reaching an Appellate Court wherein an alleged employer has not only contended but proved that no one of the principal tests or indicia of employment relied upon by the Board as indicating that status was universally applicable even to the chosen few witnesses sponsored by the Board.

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[8]Opinion, p. 13.

There was no such issue in the *Blount* case,[9] nor in the various cases cited in the Court's opinion, treating of the status of an individual employee,[10] or the employer's tort liability for the acts of such individuals.[11]

We say the gravity and importance of the decision lies in this: The Board is now investigator, prosecutor and judge. This opinion sanctifies the "Gerrymandering" of units and the handpicking of the witnesses desired by the Board to give form and color to the exemplar of the unit thus chosen.

Moreover, this archetype may apparently be an individual, if one exists, or, as in this case, a composite formed from the testimony not only of various witnesses in this case but (despite the Board's denial) of the testimony of witnesses in the other cases tried at the same time.

We say that this conclusion may be fairly and properly drawn: If the Board may conclude that employment status exists from the testimony of 15 witnesses out of 219 alleged employees in the group, it may base the same

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[9] *N. L. R. B. v. Blount*, 131 Fed. (2d) 585.

[10] *South Chicago Coal & Dock Co. v. Bassett*, 309 U. S. 251; *Parker v. Motor Boat Sales, Inc.*, 314 U. S. 244; *Walker v. Altmeyer*, 137 L. Ed. (2d) 531.

[11] *Milk Wagon Drivers Union No. 753 v. Lake Farm Products, Inc.*, 311 U. S. 91; *International Ass'n of Machinists v. N. L. R. B.*, 311 U. S. 72; *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514; *N. L. R. B. v. Condenser Corp. of America*, 128 Fed. (2d) 67; *North Whittier Heights Citrus Ass'n v. N. L. R. B.*, 109 Fed. (2d) 76.

finding on the sole testimony of one witness out of 1,000 alleged employees.

It is no answer to say that the alleged employer may put on as many witnesses as he wishes to contravert this one witness. Such witnesses, irrespective of their number, create, according to the Board's view of it, only a conflict which the Board alone may determine. Experience demonstrates that the Board suffers from that myopia characteristic of the offspring of the miscegenetic union of prosecutor and judge, which prevents it from "seeing" evidence adduced, in conflict with that produced by its own agents.

Weighing this Court's summary of the conclusions found by the Board,[12] we find:

No evidence whatever supporting the conclusion that "the designated newsboys work continuously and regularly . . ." other than the inference that if they are to come within the unit they must sell five or more (not all) of the editions published five days (out of the six publishing days) a week. No evidence whatever supporting the conclusion that the vendors ". . . rely upon their earnings for the support of themselves and their families . . ." other than the hearsay testimony of the organizer of the Union, as follows: ". . . and that probably have families and lots of them—most of them do have families—and men that depend on that work for

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[12]Opinion, p. 15.

their livelihood." [R. 860.] The conclusion "Their hours of work . . . are supervised and to some extent prescribed by the publishers or their agents," was based on the testimony of five vendors, despite the facts that this testimony was controverted by the Board's own witnesses; that other vendors testified that they personally came and went as they pleased and *the remaining vendors called as Board witnesses were not questioned and gave no testimony concerning hours.*[13] The conclusions that ". . . their efforts on the job are supervised and to some extent prescribed by the publishers or their agents," is wholly unsupported by evidence.[14]

The remaining conclusions ". . . and have their total wages influenced in large measure by the publishers who dictate their buying and selling prices, fix their markets and control their supply of papers . . . Much of their sales equipment and advertising materials is furnished by the publishers with the intention that it be used for the publishers' benefit," aptly describe the elements of practically every existing arrangement for the retail sale of proprietary, trade-marked or patented articles.

Thus the Board's findings, in so far as they attempt to bring these vendors "within this Act" and to differentiate them from those vendors "beyond its coverage"

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[13]Respondent's Brief, pp. 88-90.

[14]Respondent's Brief, pp. 84-87.

are based on nothing more substantial than inferences drawn from the testimony of a few Board-sponsored and selected witnesses, much of whose testimony is flatly contradicted by or inapplicable to the other witnesses called by the Board itself.

For this reason alone, a rehearing should be granted so that this Court may remand the case to the Board for the purpose of developing adequate testimony concerning the relationships of each and all of the vendors within the unit to the publisher.

Respectfully submitted,

H. S. MacKay, Jr.,

Edward L. Compton,

Attorneys for Respondent and Petitioner, Hearst Publications, Incorporated.

Certificate of Counsel.

We, counsel for petitioner, certify that the aforegoing petition is presented in good faith and not for the purpose of delay, and that, in our opinion, it is well founded.

May 16, 1944.

H. S. MacKay, Jr.,

Edward L. Compton.

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IN THE

Supreme Court of the United States

October Term, 1943.

No. 339

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THE TIMES-MIRROR COMPANY,
Respondent.

Petition of Respondent The Times-Mirror Company for Rehearing.

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IN THE

Supreme Court of the United States

October Term, 1943

No. 339

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

THE TIMES-MIRROR COMPANY,
Respondent.

PETITION FOR REHEARING.

To the Honorable,

The Chief Justice and Associate Justices of the Supreme Court of the United States:

The Times-Mirror Company, Respondent (Case No. 339), respectfully petitions for rehearing after judgment entered April 24, 1944.

Grounds of the Petition.

1. There is a division of opinion among the Justices.

2. The court has rejected established and definite tests but has substituted no test at all or no test susceptible of definite understanding and uniform application.

3. The court has misapprehended argument of this Respondent respecting interpretation of the Wagner Act by Federal Courts.

4. The court has overlooked authorities cited and arguments advanced by this Respondent respecting interpretation of the Wagner Act by Federal Courts.

Grounds 1 and 2.

The important question, to resolve which certiorari was granted, requires a determination of the scope of the word "employee" as it appears in the Wagner Act.[1]

The majority opinion rejects the traditional legal test applied by Federal Courts in construing the same term as it appears in other congressional acts covering social legislation, but fails to suggest any other test or any test susceptible of definite understanding and uniform application.

The special concurring opinion suggests that the test of coverage for employees embraces all employees in the conventional as well as legal sense, except those by express provision excluded, and that the primary consideration in the determination of the applicability of statutory definition is whether effectuation of the declared policy and purposes of the act comprehends securing to the individual the rights guaranteed and protection afforded by the act.[2]

The dissenting opinion suggests that Congress intended the term to be used in the common, general and prevailing understanding.[3]

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[1]Opinion, page 1.
[2]Opinion, page 18.
[3]Opinion, page 19.

The majority opinion rejects not alone the legal distinction separating employee from independent contractor and the technical relation of employer and employee, but likewise declares that "It cannot be taken, however, that the purpose was to include all other persons who may perform service for another or was to ignore entirely legal classifications made for other purposes."[4]

The result is that the traditional meaning of the term established by Federal Court decisions, including this court and the court below in cognate social legislation, has been rejected, and nothing susceptible of definite understanding and uniform application has been announced in its place. Until we have in the present case or one that may follow a clear definition of the term, the Circuit Courts of Appeals, and manufacturers and distributors of commodities will not know whether an individual or group is within or without the scope of the act.

Respecting the "service relationship" it is said that "some are within this Act, others beyond its coverage. Large numbers will fall clearly on one side or on the other by whatever test may be applied."[5]

This statement makes clear our contention that a definite test must be applied to determine who falls on the one side and who on the other. Unless a definite test is announced and uniformly applied, conflict will result in decisions of the Circuit Courts of Appeals upon petition from orders of the Board. The purpose of the decision of this court is to decide "this question as one of uniform national application."[6]

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[4]Opinion, page 10.
[5]Opinion, page 11.
[6]Opinion, page 10.

The "test of coverage for employees"[7] under the act should be so clearly stated by this court that it is not reasonable to anticipate that Circuit Courts of Appeals hereafter may differ in their understanding and application of the test. It may not be an overstatement of the requirement of definiteness to say that the test which this court announces as one of uniform, national application should be couched in terms that are not "so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application."[8]

If, however, the rejection of the established and suggested tests mentioned in the opinion and the substitution of no definite test amounts to a holding direct or by implication that the finding of the Board is final, then the decision of the Court not alone overrules the line of authorities declaring that the construction of the term is a judicial and not an administrative question[9] but also is an implied repeal of that portion of section 10 of the Wagner Act guaranteeing right of resort to the courts by any person aggrieved by final order of the Board.[10]

Grounds 3 and 4.

The extended discussion constituting part I of the majority opinion overlooks or entirely misconceives authorities cited and argument advanced in our brief. We made

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[7]Concur. Op., page 18.

[8]*Whitney v. California*, 274 U. S. 357, 368.

[9]*U. S. v. American Trucking Ass'n.*, 310 U. S. 534, 544.

[10]U. S. C. A., Title 29, Sec. 160(f).

no suggestion that construction of the term "employee" as it appears in the Wagner Act should be controlled by local law. Precisely the contrary is our position. Our position is stated in "Brief of Respondent, The Times-Mirror Company," pages 10 to 19. There we refer to numerous decisions of this court and the various Circuit Courts of Appeals and not to any state court decision. We refer to seven Congressional Acts and the interpretation of the word "employee" (as it appears in the respective acts) by this and other Federal Courts. We are in entire accord with the statement of the opinion "The Wagner Act is federal legislation administered by a national agency intended to solve a national problem on a national scale," and we would add that the language of the act should be construed in the light of the common law and the decisions of Federal Courts defining the term as used in other cognate social legislation. Because our position has been misunderstood and our authorities overlooked, we quote from page 12 of our brief:

> "The rights which the Act [Federal Employers' Liability] creates are federal rights protected by federal rather than local rules of law (citing authorities). And those federal rules have been largely fashioned from the common law (citing authorities) except as Congress has written into the Act different standards (citing authorities)."
>
> *Bailey, Adm'x v. Central Vermont Railway, Inc.*, 319 U. S. 350, 352.

If it is correct to say (as we have) that the decision and opinion fails to furnish a test susceptible of definite understanding and uniform application, it would appear to follow that a rehearing should be granted, and this Respondent so prays.

Respectfully submitted,

T. B. COSGROVE,

JOHN N. CRAMER,

Attorneys for Respondent The Times-Mirror Company.

Certificate of Counsel.

We, counsel for the Petitioner, certify that the foregoing petition is presented in good faith and not for the purpose of delay, and that in our opinion it is well founded.

T. B. COSGROVE,

JOHN N. CRAMER.

SUPREME COURT OF THE UNITED STATES.

Nos 336-339.—October Term, 1943.

National Labor Relations Board, Petitioner, 336 *vs.* Hearst Publications, Incorporated. National Labor Relations Board, Petitioner, 337 *vs.* Stockholders Publishing Company, Inc. National Labor Relations Board, Petitioner, 338 *vs.* Hearst Publications, Incorporated. National Labor Relations Board, Petitioner, 339 *vs.* The Times-Mirror Company.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[April 24, 1944.]

Mr. Justice Rutledge delivered the opinion of the Court.

These cases arise from the refusal of respondents, publishers of four Los Angeles daily newspapers, to bargain collectively with a union representing newsboys who distribute their papers on the streets of that city. Respondents' contention that they were not required to bargain because the newsboys are not their "employees" within the meaning of that term in the National Labor Relations Act, 49 Stat. 450, 29 U. S. C. § 152,[1] presents the important question which we granted certiorari[2] to resolve.

The proceedings before the National Labor Relations Board were begun with the filing of four petitions for investigation and cer-

[1] Section 2(3) of the Act provides that "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse."

[2] 320 U. S. 728.

tification[3] by Los Angeles Newsboys Local Industrial Union No. 75. Hearings were held in a consolidated proceeding[4] after which the Board made findings of fact and concluded that the regular full-time newsboys selling each paper were employees within the Act and that questions affecting commerce concerning the representation of employees had arisen. It designated appropriate units and ordered elections. 28 N. L. R. B. 1006.[5] At these the union was selected as their representative by majorities of the eligible newsboys. After the union was appropriately certified, 33 N. L. R. B. 941, 36 N. L. R. B. 285, the respondents refused to bargain with it. Thereupon proceedings under Section 10, 49 Stat. 453-455, 29 U. S. C. § 160, were instituted, a hearing[6] was held and respondents were found to have violated Sections 8(1) and 8(5) of the Act, 49 Stat. 452-453, 29 U. S. C. § 158(1), (5). They were ordered to cease and desist from such violations and to bargain collectively with the union upon request. 39 N. L. R. B. 1245, 1256.

Upon respondents' petitions for review and the Board's petitions for enforcement, the Circuit Court of Appeals, one judge dissenting, set aside the Board's orders. Rejecting the Board's analysis, the court independently examined the question whether the newsboys are employees within the Act, decided that the statute imports common-law standards to determine that question, and held the newsboys are not employees. 136 F. 2d 608.

The findings of the Board disclose that the Los Angeles Times and the Los Angeles Examiner, published daily and Sunday,[7] are morning papers. Each publishes several editions which are distributed on the streets during the evening before their dateline, between about 6:00 or 6:30 p.m. and 1:00 a.m., and other editions distributed during the following morning until about 10:00 o'clock. The Los Angeles Evening Herald and Express, published every

[3] Pursuant to Section 9(b) and (c) of the Act; 49 Stat. 453, 29 U. S. C. § 159(b) and (c).

[4] Although it treated the four representation petitions in one consolidated proceeding and disposed of them in one opinion, the Board did not consider evidence with respect to one publisher as applicable to any of the others.

[5] Subsequently those orders were amended in various details. 29 N. L. R. B. 94, 95; 30 N. L. R. B. 696, 697; 31 N. L. R. B. 697.

[6] The record in the representation proceeding was in effect incorporated in the complaint proceeding.

[7] The Times' daily circulation is about 220,000 and its Sunday circulation is about 368,000. The Examiner's daily circulation is about 214,000 and its Sunday circulation is about 566,000.

day but Sunday, is an evening paper, which has six editions on the presses between 9:00 a.m. and 5:30 p.m.[8] The News, also published every day but Sunday, is a twenty-four hour paper with ten editions.[9]

The papers are distributed to the ultimate consumer through a variety of channels, including independent dealers and newsstands often attached to drug, grocery or confectionery stores, carriers who make home deliveries, and newsboys who sell on the streets of the city and its suburbs. Only the last of these are involved in this case.

The newsboys work under varying terms and conditions. They may be "bootjackers," selling to the general public at places other than established corners, or they may sell at fixed "spots." They may sell only casually or part-time, or full-time; and they may be employed regularly and continuously or only temporarily. The units which the Board determined to be appropriate are composed of those who sell full-time at established spots. Those vendors, misnamed boys, are generally mature men, dependent upon the proceeds of their sales for their sustenance, and frequently supporters of families. Working thus as news vendors on a regular basis, often for a number of years, they form a stable group with relatively little turnover, in contrast to schoolboys and others who sell as bootjackers, temporary and casual distributors.

Over-all circulation and distribution of the papers are under the general supervision of circulation managers. But for purposes of street distribution each paper has divided metropolitan Los Angeles into geographic districts. Each district is under the direct and close supervision of a district manager. His function in the mechanics of distribution is to supply the newsboys in his district with papers which he obtains from the publisher and to turn over to the publisher the receipts which he collects from their sales, either directly or with the assistance of "checkmen" or "main spot" boys.[10] The latter, stationed at the important cor-

[8] The Herald has a circulation of about 243,000. Both it and the Examiner are owned by Hearst Publications, Inc.

[9] The News has a circulation of about 195,000. Its first three and seventh editions are consigned for the most part to route delivery or suburban dealers. Its fourth edition, which goes to press at 2:45 a. m., is sold in the city during the mornings. The remaining editions, which go to press at regular intervals between 9:50 a. m. and 5:00 p. m., are sold in the city during the afternoons.

[10] The Examiner, The Herald, and The News all employ "main spot" boys or checkmen; the Times does not.

ners or "spots" in the district, are newsboys who, among other things, receive delivery of the papers, redistribute them to other newsboys stationed at less important corners, and collect receipts from their sales.[11] For that service, which occupies a minor portion of their working day, the checkmen receive a small salary from the publisher.[12] The bulk of their day, however, they spend in hawking papers at their "spots" like other full-time newsboys. A large part of the appropriate units selected by the Board for the News and the Herald are checkmen who, in that capacity, clearly are employees of those papers.

The newsboys' compensation consists in the difference between the prices at which they sell the papers and the prices they pay for them. The former are fixed by the publishers and the latter are fixed either by the publishers or, in the case of the News, by the district manager.[13] In practice the newsboys receive their papers on credit. They pay for those sold either sometime during or after the close of their selling day, returning for credit all unsold papers.[14] Lost or otherwise unreturned papers, however, must be paid for as though sold. Not only is the "profit" per paper thus effectively fixed by the publisher, but substantial control of the newsboys' total "take home" can be effected through the ability to designate their sales areas and the power to determine the number of papers allocated to each. While as a practical matter this power is not exercised fully, the newsboys' "right" to decide how many papers they will take is also not absolute. In practice, the Board found, they cannot determine the size of their established order without the cooperation of the district manager. And often the number of papers they must take is determined unilaterally by the district managers.

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[11] The Times district managers deliver the papers directly to the newsboys and collect directly from them. On the other papers district managers may deliver bundles of papers to the checkmen or directly to the newsboys themselves. The Times customarily transports its newsboys to their "spots" from the Times building, where they first report and pick up their papers. The other respondents offer similar transportation to those of their newsboys who desire it.

[12] In the case of the Examiner these "main spot" boys, although performing services similar to those of checkmen, are less closely knit to the publisher and sometimes receive no compensation for their services.

[13] See *infra*, note 15.

[14] Newsboys selling the Herald in one residential area do not receive credit for *all* unsold papers.

In addition to effectively fixing the compensation, respondents in a variety of ways prescribe, if not the minutiae of daily activities, at least the broad terms and conditions of work. This is accomplished largely through the supervisory efforts of the district managers, who serve as the nexus between the publishers and the newsboys.[15] The district managers assign "spots" or corners to which the newsboys are expected to confine their selling activities.[16] Transfers from one "spot" to another may be ordered by the district manager for reasons of discipline or efficiency or other cause. Transportation to the spots from the newspaper building is offered by each of respondents. Hours of work on the spots are determined not simply by the impersonal pressures of the market, but to a real extent by explicit instructions from the district managers. Adherence to the prescribed hours is observed closely by the district managers or other supervisory agents of the publishers. Sanctions, varying in severity from reprimand to dismissal, are visited on the tardy and the delinquent. By similar supervisory controls minimum standards of diligence and good conduct while at work are sought to be enforced. However wide may be the latitude for individual initiative beyond those standards, district managers' instructions in what the publishers apparently regard as helpful sales technique are expected to be followed. Such varied items as the manner of displaying the paper, of emphasizing current features and headlines, and of placing advertising placards, or the advantages of soliciting

[15] Admittedly the Times, Examiner, and Herald district managers are employees of their respective papers. While the News urged earnestly that its managers are not its employees, the Board found otherwise. They do not operate on a formal salary basis but they receive guaranteed minimum payments which the Board found are "no more than a fixed salary bearing another label." And while they, rather than the publisher, fix the price of the paper to the newsboy, the Board found, on substantial evidence, that they function for the News in specified districts, distribute racks, aprons, advertising placards from the News to the newsboys, give instructions as to their use, supervise the redistributing activities of the checkmen (themselves clearly employees of the News), and hand out News checks to the checkmen for their services. On this and other evidence suggesting that however different may be their formal arrangements, News district managers bear substantially the same relation to the publisher on one hand and the newsboys on the other as do the other district managers, the Board concluded that they were employees of the paper.

[16] Although from time to time these "spots" are bought and sold among the vendors themselves, without objection by district managers and publishers, this in no way negates the need for the district managers' implicit approval of a spotholder or their authority to remove vendors from their "spots" for reasons of discipline or efficiency.

customers at specific stores or in the traffic lanes are among the subjects of this instruction. Moreover, newsboys are furnished with sales equipment, such as racks, boxes and change aprons, and advertising placards by the publishers. In this pattern of employment the Board found that the newsboys are an integral part of the publishers' distribution system and circulation organization. And the record discloses that the newsboys and checkmen feel they are employees of the papers and respondents' supervisory employees, if not respondents themselves, regard them as such.

In addition to questioning the sufficiency of the evidence to sustain these findings, respondents point to a number of other attributes characterizing their relationship with the newboys[17] and urge that on the entire record the latter cannot be considered their employees. They base this conclusion on the argument that by common-law standards the extent of their control and direction of the newsboys' working activities creates no more than an "independent contractor" relationship and that common-law standards determine the "employee" relationship under the Act. They further urge that the Board's selection of a collective bargaining unit is neither appropriate nor supported by substantial evidence.[18]

I.

The principal question is whether the newsboys are "employees." Because Congress did not explicitly define the term, respondents say its meaning must be determined by reference to common-law standards. In their view "common-law standards" are those the courts have applied in distinguishing between "employees" and "independent contractors" when working out various problems unrelated to the Wagner Act's purposes and provisions.

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[17] E. g., that there is either no evidence in the record to show, or the record explicitly negatives, that respondents carry the newsboys on their payrolls, pay "salaries" to them, keep records of their sales or locations, or register them as "employees" with the Social Security Board, or that the newsboys are covered by workmen's compensation insurance or the California Compensation Act. Furthermore, it is urged the record shows that the newsboys all sell newspapers, periodicals and other items not furnished to them by their respective publishers, assume the risk for papers lost, stolen or destroyed, purchase and sell their "spots," hire assistants and relief men and make arrangements among themselves for the sale of competing or left-over papers.

[18] They have abandoned here the contention, made in the circuit court, that the Act does not reach their controversies with the newsboys because they do not affect commerce.

The argument assumes that there is some simple, uniform and easily applicable test which the courts have used, in dealing with such problems, to determine whether persons doing work for others fall in one class or the other. Unfortunately this is not true. Only by a long and tortuous history was the simple formulation worked out which has been stated most frequently as "the test" for deciding whether one who hires another is responsible in tort for his wrongdoing.[19] But this formula has been by no means exclusively controlling in the solution of other problems. And its simplicity has been illusory because it is more largely simplicity of formulation than of application. Few problems in the law have given greater variety of application and conflict in results than the cases arising in the borderland between what is clearly an employer-employee relationship and what is clearly one of independent, entrepreneurial dealing.[20] This is true within the limited field of determining vicarious liability in tort. It becomes more so when the field is expanded to include all of the possible applications of the distinction.

It is hardly necessary to stress particular instances of these variations or to emphasize that they have arisen principally, first, in the struggle of the courts to work out common-law liabilities where the legislature has given no guides for judgment,[21] more recently also under statutes which have posed the same problem for solution in the light of the enactment's particular terms and purposes.[22] It is enough to point out that, with reference to an

[19] The so-called "control test" with which common-law judges have wrestled to secure precise and ready applications did not escape the difficulties encountered in borderland cases by its reformulation in the Restatement of the Law of Agency, § 220. That even at the common law the control test and the complex of incidents evolved in applying it to distinguish an "employee" from an "independent contractor," for purposes of vicarious liability in tort, did not necessarily have the same significance in other contexts, compare Lumley *v.* Guy [1353] El. & Bl. 216, and see also the cases collected in 21 A. L. R. 1229 *et seq.*; 23 A. L. R. 984 *et seq.*

[20] See, e. g., Stevens, The Test of the Employment Relation (1939) 38 Mich. L. Rev. 188; Steffen, Independent Contractor and the Good Life (1935) 2 U. of Chi. L. Rev. 501; Leidy, Salesmen as Independent Contractors (1938) 28 Mich. L. Rev. 365; N. Y. Law Revision Commission Report, 1939 (1939) Legislative Document No. 65(K).

[21] See note 20 *supra.*

[22] Compare, e. g., McKinley *v.* R. L. Payne & Son Lumber Co., 200 Ark. 1114; Industrial Comn. *v.* Northwestern Mutual Life Ins. Co., 103 Colo. 550; Schomp *v.* Fuller Brush Co., 124 N. J. L. 487, 126 N. J. L. 368; Unemployment Compensation Comn. *v.* Jefferson Standard Life Ins. Co., 215 N. C. 479; Singer Sewing Machine Co. *v.* State Unemployment Compensation Comn., 167 Ore. 142, with McCain *v.* Crossett Lumber Co., 174 S. W. 2d 114 (Ark.);

identical problem, results may be contrary over a very considerable region of doubt in applying the distinction, depending upon the state or jurisdiction where the determination is made;[23] and that within a single jurisdiction a person who, for instance, is held to be an "independent contractor" for the purpose of imposing vicarious liability in tort may be an "employee" for the purposes of particular legislation, such as unemployment compensation. See, *e.g., Globe Grain & Milling Co.* v. *Industrial Comn.*, 98 Utah 36. In short, the assumed simplicity and uniformity, resulting from application of "common-law standards," does not exist.

Mere reference to these possible variations as characterizing the application of the Wagner Act in the treatment of persons identically situated in the facts surrounding their employment and in the influences tending to disrupt it, would be enough to require pause before accepting a thesis which would introduce them into its administration. This would be true, even if the statute itself had indicated less clearly than it does the intent they should not apply.

Two possible consequences could follow. One would be to refer the decision of who are employees to local state law. The alternative would be to make it turn on a sort of pervading general essence distilled from state law. Congress obviously did not intend the former result. It would introduce variations into the statute's operation as wide as the differences the forty-eight states and other local jurisdictions make in applying the distinction for wholly different purposes. Persons who might be "employees" in one state would be "independent contractors" in another. They would be within or without the statute's protection depending not on whether their situation falls factually within the ambit Congress had in mind, but upon the accidents of the location of their work and the attitude of the particular local jurisdiction in casting doubtful cases one way or the other. Persons working

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Hill Hotel Co. *v.* Kinney, 138 Neb. 760; Washington Recorder Publ. Co. *v.* Ernst, 199 Wash. 176; Wisconsin Bridge & Iron Co. *v.* Industrial Comn., 233 Wis. 467. See generally Wolfe, Determination of Employer-Employee Relationships in Social Legislation (1941) 41 Col. L. Rev. 1015. And see note 23 *infra.*

23 Compare Stockwell *v.* Morris, 46 Wyo. 1, with Auer *v.* Sinclair Refining Co., 103 N. J. L. 372; Schomp *v.* Fuller Brush Co., 124 N. J. L. 487, 126 N. J. L. 368, with Fuller Brush Co. *v.* Industrial Comn., 99 Utah 97; Stover Bedding Co. *v.* Industrial Comn., 99 Utah 423, with Maltz *v.* Jackoway-Katz Cap Co., 336 Mo. 1000.

across state lines might fall in one class or the other, possibly both, depending on whether the Board and the courts would be required to give effect to the law of one state or of the adjoining one, or to that of each in relation to the portion of the work done within its borders.

Both the terms and the purposes of the statute, as well as the legislative history, show that Congress had in mind no such patchwork plan for securing freedom of employees' organization and of collective bargaining. The Wagner Act is federal legislation, administered by a national agency, intended to solve a national problem on a national scale. Cf. *e. g.*, Sen. Rep. No. 573, 74th Cong., 1st Sess. 2-4. It is an Act, therefore, in reference to which it is not only proper, but necessary for us to assume, "in the absence of a plain indication to the contrary, that Congress . . . is not making the application of the federal act dependent on state law." *Jerome* v. *United States*, 318 U. S. 101, 104. Nothing in the statute's background, history, terms or purposes indicates its scope is to be limited by such varying local conceptions, either statutory or judicial, or that it is to be administered in accordance with whatever different standards the respective states may see fit to adopt for the disposition of unrelated, local problems. Consequently, so far as the meaning of "employee" in this statute is concerned, "the federal law must prevail no matter what name is given to the interest or right by state law." *Morgan* v. *Commissioner*, 309 U. S. 78, 81; cf. *National Labor Relations Board* v. *Blount*, 131 F. 2d 585 (C. C. A.).

II.

Whether, given the intended national uniformity, the term "employee" includes such workers as these newsboys must be answered primarily from the history, terms and purposes of the legislation. The word "is not treated by Congress as a word of art having a definite meaning. . . ." Rather "it takes color from its surroundings . . . [in] the statute where it appears," *United States* v. *American Trucking Associations, Inc.*, 310 U. S. 534, 545, and derives meaning from the context of that statute, which "must be read in the light of the mischief to be corrected and the end to be attained." *South Chicago Coal & Dock Co.* v. *Bassett*, 309 U. S. 251, 259; cf. *New Negro Alliance* v. *Sanitary Grocery Co.*, 303

U. S. 552; *Milk Wagon Drivers' Union Local No. 753* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91.

Congress, on the one hand, was not thinking solely of the immediate technical relation of employer and employee. It had in mind at least some other persons than those standing in the proximate legal relation of employee to the particular employer involved in the labor dispute.[24] It cannot be taken, however, that the purpose was to include all other persons who may perform service for another or was to ignore entirely legal classifications made for other purposes. Congress had in mind a wider field than the narrow technical legal relation of "master and servant," as the common law had worked this out in all its variations, and at the same time a narrower one than the entire area of rendering service to others. The question comes down therefore to how much was included of the intermediate region between what is clearly and unequivocally "employment," by any appropriate test, and what is as clearly entrepreneurial enterprise and not employment.

It will not do, for deciding this question as one of uniform national application, to import wholesale the traditional common-law conceptions or some distilled essence of their local variations as exclusively controlling limitations upon the scope of the statute's effectiveness. To do this would be merely to select some of the local, hairline variations for nation-wide application and thus to reject others for coverage under the Act. That result hardly would be consistent with the statute's broad terms and purposes.

Congress was not seeking to solve the nationally harassing problems with which the statute deals by solutions only partially effective. It rather sought to find a broad solution, one that would bring industrial peace by substituting, so far as its power could reach, the rights of workers to self-organization and collective bargaining for the industrial strife which prevails where these rights are not effectively established. Yet only partial solutions would be provided if large segments of workers about whose technical legal position such local differences exist should be wholly excluded from coverage by reason of such differences. Yet that result could not be avoided, if choice must be made among them and controlled by them in deciding who are "employees" within the Act's meaning. Enmeshed in such distinctions, the adminis-

[24] Cf. notes 28-30 *infra* and text.

tration of the statute soon might become encumbered by the same sort of technical legal refinement as has characterized the long evolution of the employee-independent contractor dichotomy in the courts for other purposes. The consequences would be ultimately to defeat, in part at least, the achievement of the statute's objectives. Congress no more intended to import this mass of technicality as a controlling "standard" for uniform national application than to refer decision of the question outright to the local law.

The Act, as its first section states, was designed to avert the "substantial obstructions to the free flow of commerce" which result from "strikes and other forms of industrial strife or unrest" by eliminating the causes of that unrest. It is premised on explicit findings that strikes and industrial strife themselves result in large measure from the refusal of employers to bargain collectively and the inability of individual workers to bargain successfully for improvements in their "wages, hours or other working conditions" with employers who are "organized in the corporate or other forms of ownership association." Hence the avowed and interrelated purposes of the Act are to encourage collective bargaining and to remedy the individual worker's inequality of bargaining power by "protecting the exercise . . . of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." 49 Stat. 449, 450.

The mischief at which the Act is aimed and the remedies it offers are not confined exclusively to "employees" within the traditional legal distinctions separating them from "independent contractors." Myriad forms of service relationship, with infinite and subtle variations in the terms of employment, blanket the nation's economy. Some are within this Act, others beyond its coverage. Large numbers will fall clearly on one side or on the other, by whatever test may be applied. But intermediate there will be many, the incidents of whose employment partake in part of the one group, in part of the other, in varying proportions of weight. And consequently the legal pendulum, for purposes of applying the statute, may swing one way or the other, depending upon the weight of this balance and its relation to the special purpose at hand.

Unless the common-law tests are to be imported and made exclusively controlling, without regard to the statute's purposes, it cannot be irrelevant that the particular workers in these cases are subject, as a matter of economic fact, to the evils the statute was designed to eradicate and that the remedies it affords are appropriate for preventing them or curing their harmful effects in the special situation. Interruption of commerce through strikes and unrest may stem as well from labor disputes between some who, for other purposes, are technically "independent contractors" and their employers as from disputes between persons who, for those purposes, are "employees" and their employers. Cf. *Milk Wagon Drivers' Union Local No. 753* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91. Inequality of bargaining power in controversies over wages, hours and working conditions may as well characterize the status of the one group as of the other. The former, when acting alone, may be as "helpless in dealing with an employer," as "dependent . . . on his daily wage" and as "unable to leave the employ and to resist arbitrary and unfair treatment" as the latter. For each, "union . . . [may be] essential to give . . . opportunity to deal on equality with their employer."[25] And for each, collective bargaining may be appropriate and effective for the "friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions."[26] 49 Stat. 449. In short, when the particular situation of employment combines these characteristics, so that the economic facts of the relation make it more nearly one of employment than of independent business enterprise with respect to the ends sought to be accomplished by the legislation, those characteristics may

[25] American Steel Foundries Co. v. Tri-City Central Trades Council, 257 U. S. 184, 209, cited in H. R. Rep. No. 1147, 74th Cong., 1st Sess. 10; cf. Bakery & Pastry Drivers & Helpers Local 802 v. Wohl, 315 U. S. 769.

[26] The practice of self-organization and collective bargaining to resolve labor disputes has for some time been common among such varied types of "independent contractors" as musicians [How Collective Bargaining Works (20th Century Fund, 1942) 848-866; Proceedings of the 47th Annual Convention of the American Federation of Musicians (1942)], actors [see e. g. Collective Bargaining by Actors (1926) Bureau of Labor Statistics, Bulletin No. 402; Harding, The Revolt of the Actors (1929); Ross, Stars and Strikes (1941)], and writers [see, e. g., Rosten, Hollywood (1941); Ross, Stars and Strikes (1941) 48-63], and such atypical "employees" as insurance agents, artists, architects and engineers [see, e. g., Proceedings of the 2d Convention of the UOPWA, C. I. O. (1938); Proceedings of the 3d Convention of the UOPWA, C. I. O. (1940); Handbook of American Trade Unions (1936), Bureau of Labor Statistics, Bull. No. 618, 291-293; Constitution and By-Laws of the IFTEAD of the A. F. L., 1942.]

outweigh technical legal classification for purposes unrelated to the statute's objectives and bring the relation within its protections.

To eliminate the causes of labor disputes and industrial strife, Congress thought it necessary to create a balance of forces in certain types of economic relationships. These do not embrace simply employment associations in which controversies could be limited to disputes over proper "physical conduct in the performance of the service."[27] On the contrary, Congress recognized those economic relationships cannot be fitted neatly into the containers designated "employee" and "employer" which an earlier law had shaped for different purposes. Its Reports on the bill disclose clearly the understanding that "employers and employees not in proximate relationship may be drawn into common controversies by economic forces,"[28] and that the very disputes sought to be avoided might involve "employees [who] are at times brought into an economic relationship with employers who are not their employers."[29] In this light, the broad language of the Act's definitions, which in terms reject conventional limitations on such conceptions as "employee," "employer," and "labor dispute,"[30] leaves no doubt that its applicability is to be determined broadly, in doubtful situations, by underlying economic facts rather than technically and exclusively by previously established legal classifications. Cf. *National Labor Relations Board* v. *Blount, supra.*

Hence "technical concepts pertinent to an employer's legal responsibility to third persons for the acts of his servants" have been rejected in various applications of this Act both here (*International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 80-81; *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 520-521)[31] and in other federal courts

[27] Control of "physical conduct in the performance of the service" is the traditional test of the "employee relationship" at common law. Cf., e. g., Restatement of the Law of Agency § 220(1).

[28] Sen. Rep. No. 573, 74th Cong., 1st Sess. 7.

[29] Sen. Rep. No. 573, 74th Cong., 1st Sess. 6.

[30] Cf. Phelps-Dodge Corp. v. National Labor Relations Board, 313 U. S. 177; and compare Milk Wagon Drivers Union Local No. 753 v. Lake Valley Farm Products Co., 311 U. S. 91, with Sen. Rep. No. 573, 74th Cong., 1st Sess. 7.

[31] Compare National Labor Relations Board v. Waterman S. S. Corp., 309 U. S. 206; Phelps-Dodge Corp. v. National Labor Relations Board, 313 U. S. 177.

(*National Labor Relations Board* v. *Condenser Corporation of America*, 128 F. 2d 67 (C. C. A.); *North Whittier Heights Citrus Assn.* v. *National Labor Relations Board*, 109 F. 2d 76, 82 (C. C. A.); *National Labor Relations Board* v. *Blount*, *supra*). There is no good reason for invoking them to restrict the scope of the term "employee" sought to be done in this case. That term, like other provisions, must be understood with reference to the purpose of the Act and the facts involved in the economic relationship.[32] "Where all the conditions of the relation require protection, protection ought to be given."[33]

It is not necessary in this case to make a completely definitive limitation around the term "employee". That task has been assigned primarily to the agency created by Congress to administer the Act. Determination of "where all the conditions of the relation require protection" involves inquiries for the Board charged with this duty. Everyday experience in the administration of the statute gives it familiarity with the circumstances and backgrounds of employment relationships in various industries, with the abilities and needs of the workers for self organization and collective action, and with the adaptability of collective bargaining for the peaceful settlement of their disputes with their employers. The experience thus acquired must be brought frequently to bear on the question who is an employee under the Act. Resolving that question, like determining whether unfair labor practices have been committed, "belongs to the usual administrative routine" of the Board.[34] *Gray* v. *Powell*, 314 U. S. 402, 411. Cf. *National Labor Relations Board* v. *Standard Oil Co.*, 138 F. 2d 885, 887-888.

In making that body's determinations as to the facts in these matters conclusive, if supported by evidence, Congress entrusted to it primarily the decision whether the evidence establishes the material facts. Hence in reviewing the Board's ultimate conclusions, it is not the court's function to substitute its own inferences of fact for the Board's, when the latter have support in the

[32] Cf. South Chicago Coal & Dock Co. v. Bassett, 309 U. S. 251; Lehigh Valley Coal Co. v. Yensavage, 218 Fed. 547, 552 (C. C. A.)

[33] Lehigh Valley Coal Co. v. Yensavage, 218 Fed. 547, 552 (C. C. A.).

[34] E. g., Matter of Metro-Goldwyn-Mayer Studios, 7 N. L. R. B. 662, 686-690; Matter of KMOX Broadcasting Station, 10 N. L. R. B. 479; Matter of Interstate Granite Corp., 11 N. L. R. B. 1046; Matter of Sun Life Ins. Co., 15 N. L. R. B. 817; Matter of Kelly Co., 34 N. L. R. B. 325; Matter of John Yasek, 37 N. L. R. B. 156.

record. *National Labor Relations Board* v. *Nevada Consolidated Copper Corp.*, 316 U. S. 105; cf. *Walker* v. *Altmeyer*, 137 F. 2d 531 (C. C. A.). Undoubtedly questions of statutory interpretation, especially when arising in the first instance in judicial proceedings, are for the courts to resolve, giving appropriate weight to the judgment of those whose special duty is to administer the questioned statute. *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294; *United States* v. *American Trucking Associations, Inc.*, 310 U. S. 534. But where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited. Like the commissioner's determination under the Longshoremen's & Harbor Workers' Act,[35] that a man is not a "member of a crew" (*South Chicago Coal & Dock Co.* v. *Bassett*, 309 U. S. 251) or that he was injured "in the course of employment" (*Parker* v. *Motor Boat Sales, Inc.*, 314 U. S. 244) and the Federal Communications Commission's determination[36] that one company is under the "control" of another (*Rochester Telephone Corp.* v. *United States*, 307 U. S. 125), the Board's determination that specified persons are "employees" under this Act is to be accepted if it has "warrant in the record" and a reasonable basis in law.

In this case the Board found that the designated newsboys work continuously and regularly, rely upon their earnings for the support of themselves and their families, and have their total wages influenced in large measure by the publishers who dictate their buying and selling prices, fix their markets and control their supply of papers. Their hours of work and their efforts on the job are supervised and to some extent prescribed by the publishers or their agents. Much of their sales equipment and advertising materials is furnished by the publishers with the intention that it be used for the publisher's benefit. Stating that "the primary consideration in the determination of the applicability of the statutory definition is whether effectuation of the declared policy and purposes of the Act comprehend securing to the individual the rights guaranteed and protection afforded by the Act," the Board concluded that the newsboys are employees. The record

[35] 44 Stat. 1424, 33 U. S. C. § 901 *et seq.*

[36] Under § 2(b) of the Communications Act of 1934, 48 Stat. 1064, 1065, 47 U. S. C. § 152(b).

sustains the Board's findings and there is ample basis in the law for its conclusion.

III.

The Board's selection of the collective bargaining units also must be upheld. The units chosen for the News and the Herald consist of all full-time[37] newsboys and checkmen engaged to sell the papers in Los Angeles. Bootjackers, temporary, casual and part-time[38] newsboys are excluded. The units designated for the Times and the Examiner consist of newsboys selling at established spots[39] in Los Angeles[40] four or more hours per day five or more days per week, except temporary newsboys.[41]

The Board predicated its designations in part upon the finding that the units included, in general, men who were responsible workers, continuously and regularly employed as vendors and dependent upon their sales for their livelihood, while schoolboys and transient or casual workers were excluded. The discretion which Congress vested in the Board to determine an appropriate unit is hardly overstepped by the choice of a unit based on a distinction so clearly consistent with the need for responsible bargaining. That the Board's selection emphasizes difference in tenure rather than function is, on this record certainly, no abuse of discretion.

Nor is there substance in the objection that the Board's designations on the one hand fail to embrace *all* workers who in fact come within the responsible or stable full-time category generically stated, and on the other hand fail to exclude all who in fact come within the schoolboy or more volatile part-time category. The record does not suggest that the units designated, at least so far as Los Angeles newsboys are concerned, do not substantially effectuate the Board's theory or embrace a large portion of

[37] Full-time newsboys for the Herald includes those who regularly sell to the public five or more editions five or more days per week. Full-time newsboys for the News includes those who regularly sell to the general public the fifth, sixth, eighth, ninth and tenth, or the sixth, eighth, ninth and tenth editions five or more days per week, or the fourth and earlier editions for at least four hours daily between 4:00 a. m. and 10:00 a. m. five days per week.

[38] Part-time newsboys for the Herald means those selling less than five editions daily or for less than five days per week.

[39] Established spots are corners at which newsboys sold those papers for at least five or more days per week during at least six consecutive months.

[40] Glendale is included in the Times unit.

[41] Temporary newsboys are those selling for less than thirty-one consecutive days.

those who would make up a stable bargaining group based on responsible tenure and full-time work. In these matters the Board cannot be held to mathematical precision. If it chooses to couch its orders in terms which for good reasons it regards effective to accomplish its stated ends, peripheral or hypothetical deviations will not defeat an otherwise appropriate order.

Another objection urged by the Times, the Herald and the Examiner is to the Board's exclusion of suburban newsboys[42] from the units on the ground they were not organized by the union. The Board found that although all vendors in metropolitan Los Angeles were eligible for membership, the union had not been extended to the suburban groups generally and that no other labor organization was seeking to represent respondents' employees. There is no suggestion either that the union deliberately excluded suburban newsboys who sought admission or that suburban newsboys have displayed any interest in collective bargaining or self-organization.

Wide variations in the forms of employee self-organization and the complexities of modern industrial organization make difficult the use of inflexible rules as the test of an appropriate unit. Congress was informed of the need for flexibility in shaping the unit to the particular case[43] and accordingly gave the Board wide discretion in the matter. Its choice of a unit is limited specifically only by the requirement that it be an "employer unit, craft unit, plant unit, or subdivision thereof" and that the selection be made so as "to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the purposes of the Act." *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 313 U. S. 146. The flexibility which Congress thus permitted has characterized the Board's administration of the section and has led it to resort to a wide variety of factors in case-to-case determination of the appropriate unit.[44] Among the considerations to which it has given weight

[42] Except newsboys selling the Times in Glendale.

[43] Hearings before Committee on Education and Labor on S. 1958, 74th Cong., 1st Sess. 83.

[44] E. g., see First Annual Report of the National Labor Rlations Board 112-120; Second Annual Report of the National Labor Relations Board 122-140; Third Annual Report of the National Labor Relations Board 156-197; Fourth Annual Report of the National Labor Relations Board 82-97; Fifth Annual Report of the National Labor Relations Board 63-72; Sixth Annual Report of the National Labor Relations Board 63-71.

is the extent of organization of the union requesting certification or collective bargaining. This is done on the expressed theory that it is desirable in the determination of an appropriate unit to render collective bargaining of the company's employees an immediate possibility.[45] No plausible reason is suggested for withholding the benefits of the Act from those here seeking it until a group of geographically separated employees becomes interested in collective bargaining. In the circumstances disclosed by this record we cannot say the Board's conclusions are lacking in a "rational basis."

The judgments are reversed and the causes are remanded for further proceedings not inconsistent with this opinion.

Mr. Justice REED concurs in the result. He is of the opinion that the test of coverage for employees is that announced by the Board in the matter of Stockholders Publishing Company, Inc., and Los Angeles Newsboys Local Industrial Union No. 75, C. I. O., and other similar cases, decided January 9, 1941, 28 N. L. R. B. 1006, 1022-23.

[45] Matter of Gulf Oil Corp., 4 N. L. R. B. 133.

Mr. Justice ROBERTS.

I think the judgment of the Circuit Court of Appeals should be affirmed. The opinion of that court reported in 136 F. 2d 608, seems to me adequately to state the controlling facts and correctly to deal with the question of law presented for decision. I should not add anything were it not for certain arguments presented here and apparently accepted by the court.

I think it plain that newsboys are not "employees" of the respondents within the meaning and intent of the National Labor Relations Act. When Congress, in § 2(3), said: "The term 'employee' shall include any employee, . . . " it stated as clearly as language could do it that the provisions of the Act were to extend to those who, as a result of decades of tradition which had become part of the common understanding of our people, bear the named relationship. Clearly also Congress did not delegate to the National Labor Relations Board the function of defining the relationship of employment so as to promote what the Board understood

to be the underlying purpose of the statute. The question who is an employee, so as to make the statute applicable to him, is a question of the meaning of the Act and, therefore, is a judicial and not an administrative question.

I do not think that the court below suggested that the federal courts sitting in the various states must determine whether a given person is an employee by application of either the local statutes or local state decisions. Quite the contrary. As a result of common law development, many prescriptions of federal statutes take on meaning which is uniformly ascribed to them by the federal courts, irrespective of local variance. *Funk* v. *United States,* 290 U. S. 371. This court has repeatedly resorted to just such considerations in defining the very term "employee" as used in other federal statutes, as the opinion of the court below shows. There is a general and prevailing rule throughout the Union as to the indicia of employment and the criteria of one's status as employee. Unquestionably it was to this common, general, and prevailing understanding that Congress referred in the statute and, according to that understanding, the facts stated in the opinion below, and in that of this court, in my judgment, demonstrate that the newsboys were not employees of the newspapers.

It is urged that the Act uses the term in some loose and unusual sense such as justifies the Board's decision because Congress added to the definition of employee above quoted these further words: "and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, ..." The suggestion seems to be that Congress intended that the term employee should mean those who were not in fact employees, but it is perfectly evident, not only from the provisions of the Act as a whole but from the Senate Committee's Report, that this phrase was added to prevent any misconception of the provisions whereby employees were to be allowed freely to combine and to be represented in collective bargaining by the representatives of their union. Congress intended to make it clear that employee organizations did not have to be organizations of the employees of any single employer. But that qualifying phrase means no more than this and was never intended to permit the Board to designate as employees those who, in traditional understanding, have no such status.